

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE No.2

SONITPUR :: TEZPUR

Sessions Case No. 206 of 2010

Under section 498(A)/376/511 I.P.C
(Arising out of G.R. Case No. 952 of 2009)

State of Assam

–Vs–

Sri Bijoy Bora.... Accused.

Present

Ms. A. Ajitsaria, AJS,

Addl. Sessions Judge No.2, Sonitpur, Tezpur

Date of Evidence : 16.7.11, 3.03.12, 21.5.12
17.12.2013, 27.5.2014,

Date of Hearing : 30.1.15, 12.5.15

Date of Judgment : 25.5.2015

For the State : Sri Khemraj Adhikary, Addl Public Prosecutor.

For the accused : Sri A. K. Mahanta

J U D G M E N T

1. The prosecution case, in a nutshell, is that on 27.05.09, Smt "X", the victim, lodged an FIR in Lalmati Out Post stating, inter-alia, that nearly a month after marriage, her husband, the accused began to torture her. It was stated that

the accused frequently consumed excessive liquor, abused her with slang language and spoke ill about her parents and her elder sister. The informant further stated that though the accused had taken Rs. 50,000/- from her in the month of January 2007, for doing business, but he could not progress in any business. The informant stated that she gave in to the wishes of her husband inspite of his cruelty. However, on 21.5.09 at about 6 AM, while she was undergoing training at Guwahati, the accused came at around 6 AM and attempted to commit rape upon her, but failed in his attempt. The informant stated that she had informed about the occurrence to Panbazar Women's Police Station, at Guwahati on 21.5.09. On 22.5.09, she returned back to Tezpur whereupon the accused once again abused her and her father and elder sister. It was stated that since the complaint was lodged after giving due thought and taking appropriate guidance, there was some delay in lodging the complaint. The informant further wrote in the FIR that a copy of the complaint lodged before Panbazar Women's P.S was enclosed to her present complaint. The same was registered as Tezpur PS Case No. 486 of 2009 u/s 498 A IPC.

2. After due investigation, charge-sheet was submitted against the accused person, namely, Bijoy Bora, under section 498(A) IPC.

3. The accused entered appearance and after observing necessary formalities, the offence being Sessions triable, was committed to the Court of Sessions for trial by the learned Judicial Magistrate, First Class, Sonitpur, Tezpur.

4. After hearing both sides and on perusal of the police report furnished u/s 173 of the CrPC, formal charge u/s 498(A)/376/511 IPC was framed, read over and explained to the accused to which he pleaded not guilty and claimed to be tried. Hence, this trial.

5. In support of the case, the prosecution examined seven witnesses and defence examined none. The plea of defence is of total denial.

6. After closure of the prosecution evidence, the accused person was examined u/s 313 of the CrPC.

POINTS FOR DETERMINATION

(i) Whether the accused on 21.05.2009 at about 6 AM at Guwahati attempted to commit rape upon "X" ?

(ii) Whether the accused by his wilful conduct, subjected his wife, "X" with cruelty, thereby causing mental or physical injury ?

7. I have carefully examined the evidence on record and heard arguments of both sides.

DECISION AND REASONS THEREOF

8. P.W. 1, Dr. Mohan Ch. Das, father of "X" deposed that his daughter "X" was given in marriage to the accused in June, 2001, after which both of them lived in a rented house as husband and wife. PW 1 stated that from July, 2005, his daughter and the accused occupied part of his house, as tenants. PW 1 stated during the period when accused along with "X" had been staying in PW 1's house, he saw that, every evening, the accused came home drunk, inflicted mental torture on "X" and squabbled over trivial reasons. PW 1 stated that "X" was physically tortured by the accused and he dragged and beat her up. PW 1 also stated that sometimes accused used to go to the house of PW 1 and rebuke him with slang language. PW 1 stated that in the meantime "X" gave birth to twin babies and when "X" went to her office, they used to take care of both her babies. PW 1 stated that accused kept demanding money from "X". Once, when "X" had no money in hand, she took Rs. 60000/- from PW 1 and gave the same to accused. Again PW 1's son, Shyamratan Das gave accused, Rs. 3 Lakhs for purchasing a truck when, the accused had stated that truck was required for business purpose. PW 1 stated that the accused regularly demanded money from "X" and accused kept assaulting "X" physically. PW 1 stated that in May, 2009, accused pulled "X" by her hair and tried

to commit rape on her by entering the hostel at Guwahati, where she was residing during her training organised by the National Sample Survey, Govt. of India. PW 1 stated that in respect of the said occurrence, her daughter "X" had first informed the Panbazar PS in Guwahati and later lodged a complaint at the Tezpur Police Station. PW 1 stated that at present her daughter was living in his house with her twin children.

9. In cross-examination, PW 1 stated that he had 5 children, (2 daughters and 3 sons). "X", he stated was his second daughter. PW 1 stated that his elder daughter was unmarried and used to reside with him. PW 1 stated that "X" was a divorcee and she married the accused in June, 2001. PW 1 stated that, his son, Shyamratan Das was married and his wife was a doctor by profession. PW 1 stated that in November, 2001 Shyamratan's wife had an operation at Apollo Hospital, Delhi. In that operation the accused person had donated a part of his liver to his daughter-in-law. PW 1 stated that the said donation was made after about 6 months of the marriage of the accused with his daughter, "X". PW 1 denied that before donating the liver, doctors had informed the accused that after the surgery he would not be able to perform any kind of physical labour and then their family assured the accused that he would not need to do physical labour as all his responsibilities and financial expenditure would be met by them. PW 1 stated that he was not aware whether permission was required from the Central Health Department for liver donation and transplantation. PW 1 stated that Dr. M. R. Rajsekhar had conducted the operation. PW 1 stated that he not have knowledge about certificate being issued to the accused, by the doctor. PW 1 stated that "X" took treatment in Gujrat for sterility and on completion of the same, "X" was pregnant and she later gave birth to children in Tezpur Mission Hospital. PW 1 stated that the accused too had accompanied "X" to Gujrat. PW 1 stated that Rs. 60000/- was taken from him in the year 2007. PW 1 stated that the said amount was taken from him by his daughter "X", who informed him that she had given the said amount to the accused. PW 1 stated that he had not witnessed his daughter give the said amount to the accused. PW 1 stated that Shyamratan gave Rs. 3

Lakhs in November, 2006 to the accused. PW 1 stated that the amount of Rs. 3 Lakhs was paid in cash to the accused. PW 1 stated that he did not remember whether he had submitted the Account Number and the Cheque number through which Rs. 3 lakh was withdrawn from the bank to be paid to the accused. PW 1 stated that "X" , his daughter had informed him that during his daughter's training at Guwahati, the accused had attempted to rape her. PW 1 stated that duplicate copy of the complaint filed by "X" at the Panbazar Women's Police Station was enclosed with the FIR lodged by her on 27-05-2009 at Lalmati Outpost, Tezpur. PW 1 stated that in the first week of June, 2009 "X" filed a petition for divorce against the accused. PW 1 stated that no other case, except the one at hand was filed by his daughter against the accused, for suffering verbal and physical abuse at the hands of the accused. PW 1 stated that he had not stated before the IO that the accused dragged "X" in front of him. PW 1 stated that "X" was an employee of Central Govt. and he could not say the amount she received as salary. PW 1 denied that they had taken responsibility for the future of the accused as he had donated a part of his liver just after 6 months of marriage but they had not made any written agreement with the accused in this regard, as he was their son-in-law. PW 1 denied that "X" wanted divorce from the accused as she thought him to be a burden and that the instant case was a false and instituted only to make out a ground for divorce. PW 1 stated that during the period of their stay in their house, the accused had been living alone in the ground floor of the house for two years and "X" stayed with them, upstairs. PW 1 stated that the accused went to his own house in July, 2009. PW 1 denied that after lodging of the complaint by his daughter resulting in the registration of the instant case, he drove out the accused from their house; that Rs. 3 Lakhs was given to the accused by his son for purchasing a truck in token of his gratitude for having donated a part of his liver. PW 1 stated that the accused was an Automobile Engineer.

10. P.W.2, "X", deposed that she entered into wedlock with the accused on 3rd June of 2001 and after nearly a month of marriage, accused began to torture her

after consuming excessive liquor. PW 2 stated that their wedding was held at Mahabhairav and the same was registered on 3rd August, 2001. Subsequently, twins were born to "X" on 25th September of 2007. PW 2 stated that accused sought money from her in the name of business and accordingly she used to give him money and when she did not have any money to give him, she took the same from her father and her brother and gave the same to the accused. She stated that once her brother had given Rs. 95,000/- to the accused and again he gave the accused, Rs. 3 lacs. PW 2 stated that accused assaulted her physically. PW 2 stated that at the time of her delivery, when she was in Mission Hospital, accused rebuked her by screaming again and again. PW 2 stated that accused used to rebuke and scream at home too and the same was heard by the neighbors as well. PW 2 stated that accused used to suspect her. Once, when she had gone to Missamari with one of her subordinate staff, then the accused had gone there to spy on her, as a result of which, she was put to embarrassment before her staff. PW 2 stated that in May, 2009, she had gone to Guwahati for a departmental training and from 19.5.2009, she was staying in a hostel. The accused arrived in her hostel at about 6 O' clock in the morning on 21-05-09 and he abused, scolded and hit her. "X" further deposed that the accused questioned her for coming for training without his permission and for leaving the children at home. PW 2 stated that thereafter, in the hostel, the accused laid her down on the bed by opening all her clothes and tried to commit rape on her. PW 2 stated that accused left when she warned him by saying that he would be in trouble if she resorted to screaming and shouting. PW 2 further stated that she informed the Panbazar Women's Police Station at Guwahati about the incident in the evening of the same day and since it was not possible for her to contest a case in Guwahati, she lodged a complaint in Tezpur, after returning. PW 2 stated that she returned from training on 22nd May and the accused again squabbled with her on 23rd May. PW 2 stated that though she lived in her father's house as a tenant but later she started living with her father from August, 2008 and accused lived alone in the rented house. PW 2 stated that accused lived in her father's rented house upto July, 2009. PW 2 stated that she lodged an F.I.R. in the Lalmati Outpost on 27th May, 2009 vide Ext 1.

11. In cross-examination, PW 2 stated that before the marriage with the accused, she had been married to another person in 1992 and subsequently they were divorced in 1995. PW 2 stated that she had no children from her first marriage. PW 2 stated that his elder sister's name was Seema Das, who was unmarried and resided with her parents. Shyamratan, Palashratan and Alokratan Das were her brothers. PW 2 stated that after marriage, they lived in a rented house in Ushanagar for nearly 4 years. Later, for about a year they resided near the house of her parents, in a rented accommodation situated near the Employment Exchange Office. PW 2 stated that thereafter they lived in her father's house as a tenant. PW 2 stated that she had taken treatment in Gujrat where she went for treatment with the accused and initially they stayed there for 5/6 days, later they were there for about 15/20 days. It was the second time that she became pregnant and later gave birth to test tube babies. PW 2 stated that, the second time, from Gujrat, they went to her brother's house situated at Noida and from there they came to Tezpur. PW 2 stated that her sister-in-law had given her injections in Noida. PW 2 further stated that the accused had donated a part of his liver to Shyamratan's wife in November, 2001. PW 2 stated that she was not aware if they needed to take permission from the Central Health Department for such activity and stated that her brother had carried out the formalities. PW 2 stated that at the time of operation of her sister-in-law she had gone to Delhi. PW 2 stated that after the operation, it was informed that for a brief period, the accused/ her husband would not be able to perform physical labour. PW 2 denied that she, her brother and other family members had assured the accused that they would take the responsibility of his maintenance. PW 2 denied that the doctor had stated that it would take about 15/20 years to fill-up the portion of the liver which was cut. PW 2 stated that portion of the liver, if cut is filled up in 3/4 months. PW 2 stated that in the certificate (Ext.1) issued by the doctor after 5 months of the operation, it was written that "the physical condition of the patient was very delicate". PW 2 stated that she took Rs. 60000/- from her father and at the first instance she had given Rs. 50000/- to the accused and later she gave him the remaining Rs. 10000/-. PW 2 stated that in the FIR (Ext 1) it was not mentioned that her brother had given Rs.

95000/- and Rs. 3 lakhs to the accused and that her father had given Rs. 60000/-.

PW 2 stated that Rs. 95000/- was given to the accused in between the year 2002-03 and Rs. 3 lakhs was given towards the end of the year, 2006. PW 2 denied that she had not stated before the police that the accused rebuked her loudly when she was in the Mission Hospital for giving birth to children; that when she went to Missamari with a subordinate staff then the accused had gone to spy upon her resulting in embarrassment; that the accused arrived at her hostel in Guwahati at about 6 AM in the morning on 21-05-09 and he tried to open her clothes and commit rape on her and questioned her for coming on training without his permission. PW 2 stated that she along with another lady was there in the hostel at the time of training. PW 2 stated that since the accused was her husband, therefore, the caretaker had allowed him to enter in the hostel. PW 2 stated that in respect of the incident that occurred in Guwahati she had filed an F.I.R in the Panbazar Women Police Station on 21-05-09 and a copy of the same was given to her. PW 2 stated that she enclosed a copy of the said F.I.R with the instant case. PW 2 denied that the police of the Tezpur Police Station had no power to investigate the incident that occurred in Guwahati. PW 2 stated that in the first week of July, 2009 she filed a divorce case against the accused. PW 2 denied that the accused had not tortured her after one month of marriage. PW 2 denied that her father did not give any amount to the accused. PW 2 denied that once her brother Shyamratan gave the accused Rs. 3 lakhs as a token of gratituded to earn his livelihood and her monthly salary was Rs. 80000/-. PW 2 denied that she and her other family members had stated that they would take the responsibility of the future maintenance *of the accused* as he donated his liver and they did not make any written agreement because at that time they had a smooth relation; but later they used to consider him to be a burden and to remove their burden they filed a divorce case against him and also filed this case to make a ground for the divorce case. PW 2 stated that before filing this case and the divorce case the accused had been living in PW 1's rented house. PW 2 stated that in July, 2009 he went out of that house. PW 2 denied that by filing these two cases she and her family compelled the accused to go out of that house. PW 2 stated that almost a year ago (deposition

recorded on 16-7-11), the father of the accused had died and though she had received information about the same, she had not gone as she had filed divorce case against the accused.

12. P.W.3, Sri Banshidhar Borah, deposed that accused was known to him and that he called him Rinku. PW 3 stated that he was the neighbour of "X". PW 3 stated that X's father had told him about the internal strife between the accused and "X". PW 3 further stated that accused too, who had a brotherly relation with PW 3, informed him about his frequent quarrels with "X".

13. PW 3 was declared hostile at the instance of the prosecution. In cross-examination by prosecution, PW 3 denied having stated before the police that Sri Bijoy Bora, husband of "X" often assaulted her by coming home being drunk and that, several times they had settled their quarrel by going to their house along with neighbours.

14. In cross-examination by defence, PW 3 stated that "X"'s father's name was Mohan Das. PW 3 stated that he had resided as a tenant in the house of Mohan Das almost 10/12 years before he built his own house. PW 3 stated that he knew the family of Mohan Das for the past 25/26 years. PW 3 stated that as a tenant or as a neighbor he had a good relation with Mohan Das. PW 3 stated that the residence of the accused was at Kamarchuburi, Tezpur. PW 3 stated that his house was 1 ½ km from the house of Mohan Das. PW 3 stated that "X" did not go to the house of Bijoy Bora after marriage. PW 3 stated that at first they lived in the rented house and later they started living in the house of Mohan Das. PW 3 stated that before the marriage with the accused, "X" was earlier married to another person. PW 3 stated that "X" married to the accused after she had taken divorced. PW 3 stated Mohan Das had another daughter who was unmarried and resided in her father's house.

15. P.W.4, Sri Himanshu Deka, deposed that accused was known to him as Rinku and "X" too was known him. PW 4 stated that his house was at a distance of

about 200/250 ft. PW 4 stated that the accused was husband of "X" . PW 4 stated that he had no idea about the relation between the accused and "X" as husband and wife.

16. PW 4 was declared hostile at the instance of the prosecution. In cross-examination by prosecution, PW 4 denied that he stated before the police, that "X"'s husband, Bijoy Bora had tortured her for several years; that at night he returned drunk and assaulted her that, as a neighbour they had resolved their differences on several days; that the accused often used to come to in a drunken condition at night; that "X" was mentally and physically tortured by Bijoy.

17. In cross-examination by defense, PW 4 stated that "X"'s father, Mohan Das's house was located about 150 feet away, in the front side of his house. PW 4 stated that he knew the accused because he lived in the house of Mohan Das as "X"'s husband. PW 4 stated that since 2-3 years the accused Bijoy Das was not residing there. PW 4 stated that he still was a resident of the same area. PW 4 stated that the police never interrogated him regarding the instant case.

18. P.W.5, Sri Shyamratan Das, deposed that accused was his brother in law. PW 5 stated that accused mentally and physically tortured his elder sister, "X" after consuming alcohol. PW 5 stated that he resided in a different house, however occasionally when he used to go home, he had to resolve the quarrel between the accused and his sister. PW 5 stated that accused demanded money from his sister "X" and that once PW 5 had given accused Rs. 3 lakhs on behalf of his sister and that accused purchased a vehicle with the said amount, but accused could not run the vehicle and he wasted the money by drinking liquor. PW 5 stated that neighbours too knew about the quarrel between the accused and his sister and at times, they used to come and resolve their quarrel. PW 5 stated that once when "X" had gone to Guwahati for official work, the accused went there and tortured her and her sister had lodged a complaint in Panbazar Police Station. However, on their

advice to file an FIR in the local police station, her sister filed one, in the Lalmati Out Post at Tezpur.

19. In cross-examination, PW 5 stated that it was not known to him whether this case was going on the basis of FIR submitted in the Lalmati Police Station or on the basis of any other FIR. PW 5 stated that he was working in Assam till 2010 and thereafter during the period of leave he stayed in Delhi and occasionally came to home. PW 5 stated that he stayed at home for 10/15 days but when he came along with his family, he returned in a day when he came alone. PW 5 stated that he had been hearing about the quarrel between the sister and brother-in-law and he had seen their quarrel. PW 5 stated that he was not aware whether it was mentioned or not in the FIR that he had given the accused Rs. 3 lakh. PW 5 denied that after the operation of his wife, gradually they began to consider the accused to be a burden and later he was driven out from the house. PW 5 denied that all the members of their family created such an atmosphere, by neglecting him that he could no longer stay in their house. PW 5 denied that her sister filed a divorce case against the accused. PW 5 stated that he did not know whether the divorce case was filed before or after the instant case. PW 5 denied that they paid the sum to the accused in return for liver donation. PW 5 stated that his sister was a Central Govt. employee. PW 5 denied that after he donated the liver, the accused became too weak and that he could not perform any work and therefore his sister thought him to be a burden for her and filed this case to make a ground for divorce. PW 5 stated that he was there in his father's house till before a year of filing of the instant case. PW 5 stated that after filing of the case the accused went to his own father's home and his sister stayed along with her children in his father's home. PW 5 stated that his wife's name was Dr. Bonita Biswas and his wife had an operation and the accused had donated a part of his liver on 28-11-01 to his wife. PW 5 stated that it was necessary to take permission from the Hospital Board to donate the liver. PW 5 denied that they told the accused that he should not do any work and they would take his responsibility as they knew that he would become weak after the operation. PW 5 stated that he did not know what was written in the FIR filed by his sister, as

he had not read the FIR. PW 5 stated that the operation was held at Delhi Apollo Hospital. PW 5 denied that the doctor of Apollo certified that the accused could not perform hard labour after the operation.

20. PW- 6, Sundira Bora deposed that she had stayed in the neighbourhood of X. PW 6 stated that she knew that there used to be quarrel between accused and X. PW 6 stated that in the year, 2009, accused used to come home in a drunkard condition and used to quarrel with his wife. She stated that on a few occasions, she along with her husband had gone to X's house to resolve the quarrel between the accused and X. PW 6 stated that X had informed her that accused used to demand money from her and that when she had gone to Guwahati, accused went there and quarrelled with her and also beat her up. PW 6 stated that one day she had seen the accused bring three other men with him in the house of X at about 8 PM, after which he quarrelled and beat X. She further stated that the men who had accompanied the accused asked accused not to indulge in quarrelling and beating but since he did not listen, they left the house.

21. In cross-examination, PW 6 stated that the incident narrated by her had happened in May, 2009. PW 6 stated that she knew X to be the wife of the accused. PW 6 stated that the house where X used to reside was that of her father. PW 6 stated that the said house was situated just at the corner of her house. PW 6 stated that the incident she had narrated happened in the house of the father of X where X was a tenant. PW 6 denied that X was not a tenant in the house of her father. PW 6 stated that she could not say the exact date when she had gone to the house of X to resolve the quarrel, along with her husband. PW 6 stated that she had gone thrice. PW 6 stated that she did not know the reason why there was quarrel between the accused and X. PW 6 stated that she had not gone to Guwahati and that, X had informed her on phone and also when she returned from Guwahati. PW 6 stated that she used to go to X's house on hearing the quarrel and /or when she was called by her. PW 6 denied that she had deposed falsely for the sake of X.

22. PW- 7, Sri Haresh Ch Borah, deposed that on 27.5.2009 when he was posted as IC Lalmati Outpost under Tezpur PS, X lodged an FIR (Ext 1). The same was registered as Tezpur PS Case No. 486 of 2009 u/s 498 A IPC. PW 7 stated that he investigated the case, by visiting the place of occurrence, preparing sketch map (Ext 2) and recording the statement of witnesses. PW 7 confirmed the statement of witness Sri Banshidhar Bora (PW 3), witness Sri Himangshu Deka (PW 4) and exhibited their statements recorded u/s 161 CRPC as Ext 3 and 4 respectively. PW 7 stated that before he could file the charge sheet, he was transferred and ultimately chargesheet being Ext 5 was filed by SI Gulap Deka, the then I/C of Lalmati Outpost.

23. In cross-examination, PW 7 stated that he recorded the FIR in the General Dairy vide GDE No. 468 dated 27.5.2009. PW 7 stated that in Ext 1 he had not recorded the time. PW 7 stated that the true copy of the complaint lodged in the Panbazar Women Police Cell, Guwahati was not attached to the Ext 1, FIR as the same was not in the record. PW 7 stated that he did not go to Guwahati in connection with the investigation of this case and that he did not contact the police personnel at Guwahati. PW 7 stated that the chargesheet was filed on the basis of the investigation which was undertaken by him, as reflected in the dairy. PW 7 stated that in Ext 3 the section under which the charge-sheet has been filed was shown as section 498 A IPC. PW 7 stated that that no direction from the Ld Chief Judicial Magistrate was received for re-investigation of the instant case. PW 7 stated that he did not know about any other case being tried in respect of the accused person. PW 7 denied that the statements of Banshidhar Bora and Himanghsu Deka was not recorded by him as stated by him earlier and exhibited as Ext 3 and Ext 4. PW 7 stated that X stated before him that she had taken Rs.50,000/- from her father and given to the accused. PW 7 stated that X did not state before him that the accused shouted at her when she was in Mission Hospital in connection with child birth. PW 7 stated that X did not state before him that when she went with subordinate staff to Missamari, the accused came to look for her and he had met the staff once. PW 7 denied that the accused did not state before him that on

21.5.2009 at 6 AM the accused went to her hostel at Guwahati and enquired from her the reason for coming to Guwahati without informing him, by leaving the children and that the accused opened her clothes and pushed her on the bed. PW 7 denied that he did not record the statement of PW 4 u/s 161 CrPC. PW 7 stated that that Shyam Ratan Das (PW 5) did not state before him that when the complainant went to Guwahati, the accused inflicted cruelty on her. PW 7 denied that he had purposely removed the complaint lodged by the complainant in the Women's Cell. PW 7 stated that copy of the said complaint had not been. PW 7 stated that the sketch map was not forwarded along with the chargesheet, as seen from record.

24. In the instant case the accused is facing dual charge, that is, firstly of having committed cruelty upon his wife and secondly for attempting to commit rape upon her.

25. With regard to the second charge, it has been alleged that the accused on 21.5.2009, in the morning at 6 AM, attempted to commit rape upon her by opening her clothes when X had gone for training at Guwahati.

26. Exception to section 375 IPC reads as under : "sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape." In the instant case, it is seen that "X" is the legally wedded wife of the accused and she had already crossed the age of majority on the date of the alleged occurrence. A man cannot be guilty of rape on his own wife when she is over the age of fifteen years, on account of the matrimonial consent she had given which she cannot retract. Hence, it cannot be said that the accused, who is the husband of X, attempted to commit "rape" on his wife. The said charge, thus, necessarily fails and this Court need not elaborate the evidence in this regard. Suffice it would be to note that, except the version of the prosecutrix, there is nothing on record to establish the same, the fact being that no investigation was conducted in Guwahati/the place of occurrence.

27. It may be however, observed that along with the said alleged act of the accused, it has also been alleged by the prosecutrix that the accused dragged and assaulted her on 21.5.2009 at 6 AM. X stated in cross examination that another women was there with her in the guest house. However, there is no evidence on record which shows that the IO visited the place of occurrence and with the assistance of local police, tried to investigate the true facts. PW 7, the IO in fact, admitted that he had not gone to Guwahati during the course of his investigation. Thus, apart from the evidence of the prosecutrix, there is no other independent material on record which assists the case of the prosecution. In their evidence, father (PW 1) and neighbour (PW 6) have stated that they were informed about the occurrence by the prosecutrix. It is therefore to be seen whether, the prosecutrix wholly trustworthy or there have been embellishments in her version. PW 1 (father of the prosecutrix) and PW 5 (brother of the prosecutrix) have both stated that they were informed by the prosecutrix that the accused quarrelled and tortured her in the hostel at Guwahati. In absence of any medical evidence on record to support the physical hurt alleged to have been inflicted upon X on 21.5.2009, the said allegation cannot be said to have been proved.

28. Section 498-A I.P.C. makes "cruelty" by husband or his relative a punishable offence. The word "cruelty" is defined in the Explanation appended to the said Section. Section 498-A I.P.C. with Explanation reads thus:

"498A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation-For the purpose 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 meet such demand."

29. Coming to clause (b) first, it is seen that for Clause (b) of the Explanation, it would be required to show harassment with a view to meet any unlawful demand for any property or valuable security.

30. In the instant case, though instances of payments having been made by X or her family members has been stated by PW 1, PW 2 and PW 5 (Brother of X), nevertheless, the timings of such alleged payments are notable. It has been stated by PW 2/X that Rs.95,000/- was paid by her brother in the year 2002-03, Rs. 3 Lakh was paid by her brother in the year 2006 and Rs. 60,000/- was paid by her after borrowing from her father, in the year 2007. FIR (Ext 1) was instituted in the month of May, 2009. There is no evidence on record to show past complaint being made in any quarter. Nor have the PWs stated that the accused harassed his wife because she failed to meet his monetary demands. Hence, clause (b) is not attracted in the instant case.

31. To analyse the ingredients of clause (a), it is to be kept in mind that the extent of cruelty in such cases ought to be of such a grave nature which could drive the wife to commit suicide or which could cause grave injury or danger to life, limb or health (whether mental or physical) of X.

32. In the case at hand, the aspect of "driving the women to suicide" need not be touched upon, as the latter is not the case of the prosecution.

33. The element which therefore, requires analysis is whether the accused by his wilful conduct caused grave injury/danger to life/limb/mental or physical health of his wife/X.

34. In Ext 1, FIR there is reference to the past conduct of the accused but from the tenor of the FIR, it is clear that the alleged incident of quarrel, assault and attempt to rape on 21.5.2009, triggered of the proceeding.

35. As regard to physical cruelty, as has been already stated hereinabove, there is nothing on record to except the allegation by X, which finds supports in the evidence of her father PW 1 and her brother PW 5. Neither is there any medical evidence of physical assault by the accused on his wife.

36. Coming to the aspect of causing grave injury to the mental health of his wife, it is seen that PW 1, father of X, stated that during the period of the stay of the accused and his daughter in his house, her daughter resided in the first floor with him for 2 years whereas the accused resided alone in the ground floor till July, 2009. PW 2 has stated that the accused used to scream and rebuke her. PW 6, who was a neighbour too stated that, at times, when there was quarrel between the accused and X, she along with her husband, use to go and appease them. What comes from the evidence is strained domestic relationship between husband/the accused and wife/X. The nature or gravity of cruelty to the extent required for conviction under the provision of 498A IPC is absent in the instant case, benefit of which ought to be given to the accused.

37. In view of the discussion aforesaid, this Court holds that the accused, is not guilty of the offence charged and, as such, he is acquitted of the charge u/s 498A/376/511 IPC and set at liberty forthwith.

38. Considering the facts of the instant case, this matter is not referred to District Legal Services Authority for granting compensation u/s 357A Cr.P.C.

39. Send a copy of the order to Learned District Magistrate, Sonitpur u/s 365 Cr.P.C.

The judgment is signed, sealed and pronounced in open court, on this the 25th day of May, 2015.

Additional Sessions Judge No. 2,
Sonitpur, Tezpur.

A-N-N-E-X-U-R-E

1. Witnesses for Prosecution

- P.W. 1: Dr. Mohan Ch. Das
- P.W. 2: "X"
- P.W. 3: Sri Banshidhar Borah
- P.W. 4: Sri Himanshu Deka
- P.W. 5: Sri Shyamratan Das
- P.W. 6: Smt Sundira Bora
- P.W. 7: Sri Hareesh Ch Borah, 2nd Officer Rohta PS

2. Witnesses for Defence : NIL

3. Court Witnesses : NIL

4. Prosecution Exhibits:

- Ext. 1: FIR
- Ext 2: Sketch Map Seizure List
- Ext 3: Statement of Witness Sri Bhanshidhar Bora
- Ext 4: Statement of Witness Sri Himangshu Deka
- Ext 5: Chargesheet

5. Defence Exhibits : NIL

6. Material Exhibits: NIL

Addl. Sessions Judge No.2
Sonitpur, Tezpur