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2. On receipt of the ejahar, O/C, Behali P.S. registered the case as Behali P.S. Case No.123/10, U/S-498(A)/313/34 of the IPC and investigated the same.
3. On completion of investigation police submitted charge-sheet against the accused Tutu Borah, Hara Kt. Borah and Smti Kanmai Borah U/S-498(A)/313/34 of the IPC.
4. On appearance of the accuseds before the court of learned committal Magistrate, copy was furnished to the accused and notifying the Public Prosecutor, committed the case to the court of Sessions.
5. On being receipt of the case by the learned Sessions Judge, Tezpur, the same was registered and transferred to this court for disposal.
6. On appearance of the accuseds before this court, this court after hearing both sides, formally framed charge U/S-498(A)/313/34 of IPC and read over to which the accused persons pleaded not guilty and claimed to be tried.
7. The prosecution has examined as many as four witnesses including the informant in this case. They were cross-examined by the learned defence Counsel. The statement of the accuseds have been recorded as per provision of Section 313 of the Criminal Procedure Code (in short the "Code"). Defence plea is of total denial of the charge and defence adduced no evidence.

NOW, THE POINTS FOR DETERMINATION ARE

8. (i) Whether the accused Tutu Borah being the husband and other accuseds being in-laws of Smti Usha Das, in furtherance of common intention, during the period of 2.6.2010 to 13.09.2010 at Natun Bihmari under Behali P.S. subjected her to cruelty by forcefully causing miscarriage of her child and abusing with filthy language and driven her out from the house of the accuseds which were willful conduct which was 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 or harassed her with a view to meet any unlawful demand for any property or valuable security on account of failure by her or by any person related to her to meet such demand and thereby committed an offence punishable U/S-498(A)/34 of the IPC ?

(3)

(ii) Whether the accuseds in the month of July,2010, in furtherance of common intention, voluntarily caused Smti Usha Das, then being with child to miscarry without her consent, such miscarriage not being caused by the accused in good faith for the purpose of saving her life and thereby committed an offence punishable U/S-313/34 of the IPC ?

DECISION AND REASONS THEREOF

9. To arrive at a judicial decision let the evidence on record be appreciated.

10. To prove the charge U/S-498(A)/34 of the IPC the prosecution is to prove the following ingredients :-

(i) That the accused Tutu Borah being the husband and other accuseds being in-laws of Smti Usha Das, in furtherance of common intention, subjected her to cruelty i.e. wilful conduct which is such a nature as is likely to drive the victim to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) to her or harassment to her with a view 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.

11. To prove the charge U/S-313/34 of the IPC, the prosecution must prove that the accused Tutu Borah and other accuseds, in furtherance of common intention, voluntarily causes Smti Usha Das with child to miscarry which was not caused in good faith for the purpose of saving the life of the victim and without her consent.

12. PW-1 Smti Usha Das who deposed that on 2-6-10 when she returned home along with two other girls after attending a marriage ceremony in the house of a villager, then on the road the accused Tutu Borah took her to the house of one neighbouring people and committed bad act. Matter was reported to V.D.P. Secretary and on being advised by him, PW-1 lodged FIR which is Ext.1 where Ext.1(1) is the signature of PW-1.

In cross-examination PW-1 deposed that she was socially married to the accused Tutu Borah and in the year,2010 she left the house of the accused.

PW-1 denied defence suggestion that no occurrence took place as alleged. PW-1 further deposed that she got married subsequently to one Ratan Das and she is not willing to proceed further with this case and also has no objection if accused are acquitted.

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13. PW-2 Sri Jayanta Das who deposed that victim Usha Das is his daughter and accuseds are known to him. About three years back (from the date of deposition) one day Usha Das lodged ejahar against the accused Tutu Borah with allegation of misbehaviour. At that that time Usha Das was 18 years old. Subsequently, Usha Das eloped with one Ratan Das and since then she has been living as husband and wife.

In cross-examination PW-2 deposed that he is not interested to proceed further with the case and also no objection if accuseds are acquitted.

14. PW-3 is Smti Purnima Das who deposed that in the year,2010 her daughter Usha Das went to attend a marriage ceremony in her village. When she returned home, then on the way accused Tutu Das took her to the house of one villager and committed bad act for which FIR was lodged by Usha Das. She also deposed that subsequently, Usha Das eloped with one Ratan Das and since then, she has been living with him as husband and wife.

In cross-examination PW-3 deposed that the entire occurrence took place due to misunderstanding as such, she is not interested to proceed further with the case and also no objection if accused are acquitted.

15. PW-4 is Smti Ranjumoni Das who deposed that she knows both the sides. About three years back (from the date of deposition) on the day of occurrence she heard regarding an altercation between her husband Tutu Borah. She also deposed that she did not see the occurrence. At present Usha Das living with one Ratan Das as husband and wife.

In cross-examination PW-4 deposed that she is the paternal uncle of the victim and the matter is amicably settled as such she has no objection if accused are acquitted.

16. Above are the evidences led by the prosecution to prove its case against the accused.

17. From the evidence of PW-1 Smti Usha Das that she deposed nothing against the accuseds implicating with the alleged offences punishable U/S-498(A)/313/34, IPC. The victim herself stated that accused Tutu Borah at the time of occurrence was her legally married husband and said accused committed bad act with her. PW-1 nowhere stated specifically what kind of act was committed by the accused Tutu Borah which are termed as bad act. Moreover, he has not deposed anything regarding physical or mental torture by her accused/husband

(5)

Tutu Borah and other accuseds on demand of dowry. PW-1 is also silent regarding the allegation of illegal miscarriage caused by the accused without her consent. There is no eye witness of the alleged occurrence of committing bad act by the accused Tutu Borah on the road who is none but her own husband.

18. Remaining PWs also deposed nothing corroborating PW-1 and said remaining PWs deposed that the occurrence took place due to misunderstanding and they are not willing to proceed further with this case. Moreover, victim also eloped with one Ratan Das and living as husband and wife. PW-1 being the victim also deposed the same that she is not interested to proceed further with this case and also no objection if accused are acquitted.

19. On careful scrutiny of evidence on record and in the backdrop of foregoing discussions, I am of the view that the prosecution has failed to prove its case against the accused beyond all reasonable doubts. I hold the accuseds not guilty and they are acquitted from the charge of offence U/S-498(A)/313/34 of the IPC and set at liberty forthwith.

20. Judgment prepared and pronounced and delivered in the open court and appended to the case record under my hand and seal of the Court on this the 23rd day of May, 2014 at Biswanath Chariali.

Sri S. Khound.
Additional District & Sessions Judge,
Biswanath Chariali.

Dictated & Corrected by me

Sri S. Khound.
Additional District & Sessions Judge,
Biswanath Chariali.
