

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

SESSION CASE NO. 214 of 2018

Under section 498 A/307 of I.P.C
(Arising out of G. R Case No. 3347/2017)

State of Assam

-Vs-

1. Sri Baburam Das

...Accused Person

**Present: Smti I. Barman,
Sessions Judge,
Sonitpur :Sonitpur.**

For the State : Mr. Munin Chandra Baruah,
Public Prosecutor

For the accused : Smti Marami Das, Advocate.

Date of Argument : 12-02-2021

Date of Judgment : 17-02-2021.

JUDGMENT

1. The prosecution case as unfolded in the Ejahar (Ext. 1), in brief, is that informant/victim Mamoni Das got married in the month of March, 2005 with the accused Baburam Das but after two months of their marriage accused Baburam Das started torturing her both physically and mentally demanding dowry. It is alleged that on several occasions accused Baburam Das along with his sister Smti Sabita Das made her senseless by assaulting her with lathi and attempted to kill her by pressing her neck and also tried to set her on fire by pouring kerosene on her body. It is further alleged that the accused on several times claiming of being married another girl, used to oust her from home at

midnight and demanding dowry of Rs. 1,00,000/- threatened her. Accused Baburam Das had assaulted their son Abhijit Das also.

2. Based on the ejarah received from the informant/victim (PW 2) on 02-09-2017, the O/C Dhekiajuli PS registered the case being Dhekiajuli P.S. Case No. 781/2017 u/s 498(A)/307/494 of the IPC and entrusted ASI Keshab Handique to investigate the case. In course of investigation, the Investigating Officer visited the place of occurrence, drew the sketch map of the place of occurrence, recorded the statement of the witnesses and on completion of investigation having found materials submitted charge-sheet against accused Baburam Das u/s 498(A)/307/494 of the IPC.

3. On appearance of the accused Baburam Das, the learned Judicial Magistrate, 1st class, Sonitpur, Tezpur committed the case to the court of Session, Sonitpur, Tezpur after observing the required formalities being the offence u/s 307 IPC exclusively triable by the Court of Session.

4. After committal, on going through the police report furnished u/s 173 Cr.P.C. and hearing the learned counsel of both sides, charge u/s 498(A)/307 of the IPC was framed against accused Baburam Das and the same on being read over and explained to the accused, he pleaded not guilty and claimed to be tried. Defence plea is of total denial.

5. To substantiate the case, prosecution examined as many as five numbers of witnesses. Statement of accused under Section 313 Cr.P.C was recorded wherein the accused denied all the allegation leveled against him and pleaded false implication. Defense declined to adduce evidence.

6. I have heard the argument of the learned counsel of both sides and also have gone through the materials on record.

7. The points for determination:

(1) Whether accused Baburam Das being the husband of victim Smti Mamoni Das since after two months of marriage subjected her to cruelty both physically and mentally demanding dowry

and thereby committed an offence punishable u/s 498 A of the IPC ?

(2) Whether accused Baburam Das on various dates, times at Krishna Nagar, Ward No. 5, Dhekiajuli under Dhekiajuli PS had assaulted his wife Mamoni Das and tried to kill her by pressing neck and pouring kerosene oil to set on fire with such intention and knowledge, and under such circumstances, that, if, by that act, he had caused the death of Mamoni Das, he would have been guilty of murder and thereby committed an offence punishable under section 307 of the IPC?

Discussion, Decisions and reasons thereof:

8. In order to appreciate the argument advanced on behalf of both the sides, it is considered next to outline a sketch of the evidence on record.

9. Sri Madan Chandra Das, the elder brother of the victim was examined as PW 1. He stated that accused Baburam Das married his sister Mamoni Das in the year 2006. He stated that after some days of marriage the accused used to torture her. He in drunken state abused her and had assaulted her demanding dowry. He tried to kill her by pressing neck and by pouring kerosene oil to set on fire. At her pregnancy stage, the accused drove her out from her matrimonial home. Hence, she took shelter in her parental house and gave birth to a son there. He further stated that the accused neither enquired about the victim or her child nor paid any maintenance to them and claimed that he married another woman.

During cross examination he stated that he heard the fact of assault from his victim sister. He could not say the dates on which the accused had assaulted his sister and tried to kill her by pressing her neck and by pouring kerosene oil to set her on fire. His sister reported

him that the accused married another woman. He did not see the woman whom the accused married after the victim was driven out. He also did not know whether the accused married another woman or not.

10. Evidence of PW2 the victim/informant Smti Mamoni Das is that after the marriage, accused tortured her both physically and mentally and during her pregnancy also he tortured her. He did not provide her treatment when she fell ill. She further stated that sometimes the accused along with his sister Sabita Das had assaulted her by holding her hair and attempted to strangulate her. They even tried to kill her with dao. Accused also attempted to set her on fire by pouring kerosene oil. Once the accused gave her blow over eyes. She further stated that the accused often used to claim to be a married person having another wife and family. She stated that accused demanded dowry of rupees one lac. She proved the FIR as Ext. 1. She stated that due to torture meted to her, she compelled to take shelter in her parental house and gave birth to a son at Mangaldoi Hospital. He neither received her phone call nor paid any maintenance for herself and her son.

During cross-examination, PW 2 stated that after about one year of her marriage, she filed a case against her husband alleging torture. She admitted that she had not seen any other wife of the accused husband. She stated that she reported the fact of torture to one Bakul Das the neighbour of the accused.

11. PW 3 Sri Jibon 'Robi' Das, the cousin of the victim testified that accused used to torture the victim/informant both physically and mentally. He further stated that on the day of filing the FIR, the victim called him and informing him about the incident, had shown the injuries caused to her by accused Baburam Das. He stated that though the accused used to torture the victim but with a hope that everything will be normal, she did not file any complaint earlier.

In cross-examination, he stated that he only had seen the injury of the victim, except that he had not seen anything personally. He

further stated that accused and victim lived as husband and wife for about 13/14 years.

12. PW4 Sri Susil Robidas the uncle of the victim stated that on the day of incident when he was at Mangaldoi, victim rang at her parental home that she was beaten by accused Baburam Das and his sister Sabita Das. Then he along with Madan Das went to the village of the accused and called the neighbours. They found the victim Mamoni Das sitting in the market near police station. Then they along with victim went to the house of the accused and saw cloths of Mamoni Das and books of her son being scattered in the courtyard of the house. He further stated that from the neighbours he heard that on last night accused tried to set the victim on fire by pouring kerosene on her body, hence, out of afraid she ran away from the house and reached near police station. He also stated that when victim was running away, accused chased her and pushed her in front of a running vehicle.

In cross-examination, he stated that he had not seen the accused torturing the victim. He only heard from local people and from the victim herself. He did not know the neighbours of the accused. He did not remember the name of the persons whom he met in the premises of the accused. He also had not seen who scattered the cloths and books.

13. The evidence of PW5 Sri Pradip Kr. Bora, the O/C of Dhekijuli PS the Investigating Officer is that on 02-09-2017 Mamoni Das lodged an FIR (Ext 1) before Dhekiajuli PS, on the basis of which he registered the case being Dhekiajuli PS Case no. 781/2017 u/s 498(A)/307/494 of IPC and endorsed ASI Keshab Handique (since deceased) to investigate the case. In course of investigation Keshab Handique visited the place of occurrence, drew the sketch map of the place of occurrence (Ext.2), recorded the statement of witnesses, arrested the accused Baburam Das and on completion of investigation submitted charge sheet (Ext.3) against accused Baburam Das u/s 498A/307/494 of the IPC.

14. The core issue of this case is whether the accused being the husband of the victim (PW 2) subjected her to cruelty demanding dowry. The word "cruelty" is explained in section 498-A IPC thus :

"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."

15. Matrimonial offences are committed normally within the four walls of the matrimonial home. Definitely there were matrimonial discord between the accused and his wife PW 2 Mamoni Das and therefore, PW 2 took shelter in her parent's house and they are not living together. Such living apart does not naturally tantamount to exercise of cruelty on the wife. Definite evidence is required to hold one guilty of the offence under section 498 A IPC.

16. PW 2 is the star witness about the allegation. She testified that during her conjugal life, the accused and his sister had assaulted her by holding her hair and attempted to strangle her. They also tried to kill her with dao and to set her on fire by pouring kerosene. Her evidence disclosed that once the accused person gave her blow over her eyes. The testimony of the victim that the accused with his sister assaulted her by holding her hair, attempted to strangle and to cut her with a dao and attempted to set her on fire were not made before the Investigating Officer in statement u/s 161 Cr.P.C. Though PW 1 also

stated that the victim reported him that the accused assaulted her and tried to kill her by pressing her neck and to set her fire but neither PW 1 nor PW 2 mentioned the dates on which the accused did so. Testimony of PW 3, the cousin brother of the victim is that since marriage accused used to torture his wife but he did not state the manner of torture allegedly meted upon the victim. The testimony of PW 3 also reveals that on the day of filing the FIR i.e. on 02-09-2017 the victim called him and stating about the incident in the police station, had shown the injuries upon her body. But he had not stated what was the incident which was reported by the victim. He also did not mention the type of injuries sustained by the victim. Had she reached the police station with injury on her body, why police did not sent her for medical examination. The victim nowhere stated that she ever took treatment for torture meted to her. Further, the testimony of PW 3 that PW 1, the elder brother of the victim told him that the accused once tried to set fire by pouring kerosene upon the victim, but PW 1 did not state that he reported the same to PW 3. Neither PW 1, PW 2 nor PW 3 specifically mentioned on which date the accused attempted to set her fire during her conjugal life of 11 years. In this case, all being the family members of the victim are interested witnesses. Though the victim stated that she reported about the torture meted upon her to neighbour Bakul Das, but prosecution did not examine him. None of the witnesses had seen the accused torturing the victim.

17. What is to be noted in the evidence on record is that the victim PW 2 has not mentioned about any date on which she was physically assaulted or tortured mentally during her conjugal life. She has mentioned 3/4 occasions on which she was assaulted or was attempted to kill but no date of single occasion has been mentioned. There is also no evidence that she ever got herself examined by any doctor. No any injury report was produced by her. In absence of any proof, prosecution cannot claim that charge u/s 498(A) IPC as defined in clause (a) of 'cruelty' has been established against the accused.

18. So far the evidence of PW4, the uncle of the victim is concerned, on the day of incident when he was at Mangaldoi, on receiving a phone call from Mamoni Das at her parental house that she was assaulted by the accused and his sister, he along with PW 1 coming to the village of the accused, called the neighbouring people. PW 4's evidence also disclosed that they found that being afraid, the victim was sitting in the market near police station and then they took her to the house of the accused and found the clothes of the victim and books of her son lying scattered in the court yard of the accused. He also stated that from the neighbours of the accused, he heard that last night accused pouring kerosene oil attempted to set her fire and when she ran away to save herself, accused chased her and pushed her in front of a running vehicle. But neither the victim nor her brother PW 1 corroborated his version that on the day of incident itself, the victim rang at her parental house narrating the incident of assault by the accused and his sister and that she was found sitting in the market near police station or that they found the clothes of the victim and books of her son being scattered in the court yard of the accused. The testimony of the PW 4 that the neighbours of the accused reported them that on last night accused pouring kerosene oil attempted to set fire on the victim is also not supported by other PWs including the victim. Victim also did not corroborate the fact of chasing her and pushing her in front of a running vehicle. PW 4 exaggerated the story and cannot be believed.

19. Though the victim and her brother PW 1 alleged that the accused used to say that he had another wife and thereby the prosecution tried to establish mental torture upon the victim but none of the witnesses had seen the another wife nor knew her name. They made some vague statement.

20. Further regarding demand of dowry, the allegation of the victim that the accused demanded Rs. One lac is not corroborated by any other witnesses. PW 2 also did not state on which date(s) the accused

demanded one lac. PW 1 the victim's elder brother only stated that the accused demanded dowry. He did not state what dowry he demanded.

A bare reading of the allegations made in the FIR and the deposition of PW 1 and PW 2 makes it clear that some omnibus statements were made by PW 1 and PW 2 alleging demand of dowry. PW 3 and PW 4 the family members of the victim remained silent regarding demand of any dowry.

21. On appreciation of the evidence as led by the prosecution discussed above and the rival contentions as advanced before the court, it appears that the allegations against the accused was absolutely sweeping in nature. The alleged demand of money was not corroborated by PW3, PW 4, the brother and cousin brother of the victim herself. The evidence on record is neither sufficient nor cogent for holding the accused guilty as defined in term 'cruelty' as discussed above.

22. From the attending circumstances of the allegations or from the deposition, nothing can be inferred as to the intention to kill the victim. What crystallized from the above discussion is that there was no cogent and clinching evidence on record proving the act of the accused and the charge u/s 307 IPC also stands disproved.

23. In the light of the above discussions, I have no difficulty in holding that the prosecution failed to prove the involvement of the accused beyond all reasonable doubt to the commission of offence.

24. Accordingly, accused Baburam Das is acquitted of the charge u/s 498-A/307 of the IPC on benefit of doubt and set him at liberty forthwith. His bail bond shall remain in force till next six months.

25. Judgement is pronounced and delivered in open court under the Seal and signature of this Court on the **17th day of February, 2021.**

(I. Barman)
SESSIONS JUDGE
SONITPUR : TEZPUR

Dictated and corrected by me.

(I. Barman)
SESSIONS JUDGE,
SONITPUR :: TEZPUR.

APPENDIX

Prosecution Witness

- | | | | |
|----|--------------------------|----|------------------------|
| 1. | Prosecution Witness No.1 | :- | Sri Madan Chandra Das, |
| 2. | Prosecution Witness No.2 | :- | Victim/informant |
| 3. | Prosecution Witness No.3 | : | Sri Jibon Robidas |
| 4. | Prosecution Witness No.4 | :- | Sri Susil Robidas, |
| 5. | Prosecution Witness No.4 | :- | Sri Susil Robidas, |

EXHIBITS.

- | | | |
|-----------|---|---------------|
| Exhibit 1 | : | FIR. |
| Exhibit 2 | : | Sketch map |
| Exhibit 3 | : | Charge sheet. |

(I. Barman)
SESSIONS JUDGE,
SONITPUR: TEZPUR