

**IN THE COURT OF JUDICIAL MAGISTRATE**

**FIRST CLASS,**

**GOHPUR, SONITPUR**

**PR. Case No.135/2019**

**Under Section 498 A of the Indian Penal Code**

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STATE OF ASSAM

.....**PROSECUTION**

**-VERSUS-**

Mr. MINTU BORAH

S/O Mr. NARAYAN BORAH

RESIDENT OF:

VILL- BORIGAON

P.S.- GOHPUR

DIST.- BISWANATH

.....**ACCUSED PERSON**

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**PRESENT:** Mr. RAJ SEKHAR DUARA, JUDICIAL  
MAGISTRATE FIRST CLASS, GOHPUR, SONITPUR

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**ADVOCATE FOR THE PROSECUTION:** Ms. SANTANA  
BHUYAN, APP

**ADVOCATE FOR THE ACCUSED PERSON:** Mr. A.K.DAS

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| <b>CHARGE FRAMED ON:</b>      | 22.01.2020                            |
| <b>EVIDENCE RECORDED ON:</b>  | 19.02.2021, 16.11.2021,<br>09.12.2021 |
| <b>ARGUMENTS HEARD ON:</b>    | 03.01.2022                            |
| <b>JUDGMENT DELIVERED ON:</b> | 12.01.2022                            |

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## **JUDGMENT**

### **FACTUAL SCENARIO**

1. The Prosecution's case can be surmised as: one Ms. Nalini Borah had lodged an F.I.R. dated 13.08.2018 before the officer-in-charge of Gohpur P.S., alleging inter alia that her daughter, Ms. Bornali Borah was subjected to several incidents of physical abuse and mental harassment by her husband, who she alleges had also threatened to kill her on various occasions over the years. It was lastly alleged that on 11.08.2018 when the time was around 10 p.m. at night, her son -in-law demanded money from her daughter and on her failure to meet his demands, he assaulted her daughter and also tried to kill her. Hence, this case.

### **INVESTIGATION BY POLICE**

2. On receipt of the F.I.R., the Officer- in- charge of Gohpur P.S registered the same on 24.08.2018 as Gohpur P.S. Case No.217/18 under Sections 498 A, 323, 294 read with Section 34 of the Indian Penal Code and conducted investigation into the matter. On conclusion of such investigation, the police submitted charge-sheet against

the accused person, Mr. Mintu Borah under Section 498 A, 323, 294 of the Indian Penal Code.

### **APPEARANCE OF THE ACCUSED AND TRIAL**

3. After having taken cognizance, summons were issued by this Court to the accused person and in due course, he appeared in compliance thereof. Thereafter, copies of the relevant documents stipulated under section 207, Cr.P.C were furnished to him. Subsequently, formal charge under Sections 498 A, IPC was framed and the same was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

4. During trial, to substantiate their case, the prosecution examined 4 (four) witnesses and exhibited 3 (three) documents after which evidence for prosecution was closed. The incriminating materials brought out in the prosecution evidence were put forth to the accused person and his statement as mandated by Section 313 of the Criminal Procedure Code was recorded to which the accused person replied in negative, denouncing all allegations and denied his involvement in the instant case. Defense declined to adduce any evidence in support of their case.

## **POINT FOR DETERMINATION**

5. Upon hearing both the parties and on thorough perusal of the case record, the following point for determination has been formulated by this court to arrive at a definite finding.

***Whether the accused person, on or about the 11<sup>th</sup> day of August, 2018 at around 10:00 p.m. at Borigaon as well as on previous occasions, being the husband of Ms. Bornali Borah, inflicted cruelty by physically abusing and mentally harassing her for unlawful demands of money and thereby committed an offence punishable under Section 498 A, IPC?***

6. I have carefully perused and considered the evidence brought on record and keenly heard the arguments advanced by the learned counsels for both sides. The defense denouncing all allegations has argued that no case has been made out against the accused person and that he has been falsely implicated in this case. The evidence brought forth is as under:

## **EVIDENCE**

7. P.W.1, Ms. Nalini Borah, the informant had deposed that soon after the marriage of her daughter with the accused some 14 years back, he started physically and

verbally abusing her. She alleges that the accused was prone to violence and habitually assaulted her daughter routinely in an inebriated state. P.W.1, further alleges that on 11.08.2018 at around 10:30 p.m., the accused tried to choke her daughter to death and fearing her life, she returned to their home. She also alleges that the accused used to demand money from her daughter which he wanted her mother to pay. She stated that she paid up on many occasions. She lastly alleged that since 2018, her daughter has been residing with her but even then, the accused used to come to their courtyard and threaten them with a Dao. **Ext. 1** is the F.I.R. and **Ext. 1(1)** is her signature on it.

8. During her cross-examination, she affirmed that her daughter did not undergo any treatment for the abuse at the hands of her husband. She also confirmed that she had not witnessed the incident on 11.08.2018 and her knowledge about it is limited to what her daughter told her. She also added that she had filed the F.I.R. three days later.

9. P.W.2, Ms. Barnali Borah has deposed that soon after her marriage to the accused some 15 years back, he started physically assaulting her for demands for dowry money. She alleges that her husband is a habitual drinker and a regular Marijuana smoker. She alleges that he used

to kick her, punch her and mentally harass her every night and even during her periods. She alleges that he demanded fridge, sofa etc. and when she failed to meet his demands, he assaulted her by slapping her and even attempted to choke her. She stated that she met a few of his demands which she brought from her parents. P.W.2 further alleges that on 11.08.2018 at around 10:00 p.m., he tried to choke her, from which she narrowly survived. She adds that in fear for her life, she left his house and since 2018, she has been residing at her parent's house. When she was cross-examined, she averred that she had never undergone any treatment for the injuries she suffered in consequence of the abuse at the hands of her husband.

10. P.W.3, Ms. Mina Borah has deposed that the parties were married around 8 years back and have two children, a daughter and a son. She states that around 2 years back, the couple had a fight after which, the wife left her matrimonial house. During her cross-examination, she affirmed that after the case was filed, the daughter of the informant continued to stay with her husband and also that she had not witnessed any fights between the couple.

11. P.W.4, A.S.I., Mr. Narayan Baruah, the I.O. has deposed that the investigation of the case was undertaken by him in pursuance of the FIR filed by the Informant, Ms.

Nalini Baruah against Mr. Mintu Bora and after conclusion of such investigation, he had filed the charge-sheet under sections 498 A, 323, 294 of the Indian Penal code against the accused, Mr. Mintu Borah. **Exhibit 2** is the sketch-map with **Exhibit 2 (1)** his signature. **Exhibit 3** is the charge-sheet with **Exhibit 3 (1)** his signature. During his cross-examination, he averred that the informant had refused to be medically examined. He also stated that there is no mention in the F.I.R. of any amount purportedly demanded by the accused. He also affirmed a few omissions by confirming that the informant had not stated before him that the accused had demanded money from her daughter and that she met those demands. He further confirmed that the informant had stated before him that in the year 2018, the accused had threatened her with a Dao. He also confirmed that P.W. 2, the victim had not stated before him that on 11.08.2018 at around 11:00 p.m., the accused had tried to strangulate her.

## **DISCUSSION, DECISION AND REASONS THEREOF**

12. **Point for determination:** This court at the very outset finds it imperative to underline that apart from P.W.2, the victim herself, there are no eye witnesses to any of the alleged acts of abuse. Be that as it may, inviting attention to the evidence of P.W.1, the informant and P.W.2, the victim, there are allegations in their testimonies ranging from acts of physical abuse to mental

harassment for dowry meted out by the accused. Here, a reference is made to an observation made by the Apex Court in **State Of A.P vs. M. Madhusudhan Rao, (2008) 15 SCC 582** wherein the Hon'ble Supreme Court held that, *"The definition stipulates that the harassment has to be with a definite object of coercing the woman or any person related to her to meet an unlawful demand. In other words, for the purpose of Section 498-A I.P.C. harassment simpliciter is not "cruelty" and it is only when harassment is committed for the purpose of coercing a woman or any other person related to her to meet an unlawful demand for property etc., that it amounts to "cruelty" punishable under Section 498-A I.P.C"*.

13. P.W.1 and 2 in their respective testimonies have alleged that after the marriage of P.W.2 with the accused, the accused who as alleged was prone to violence started physically assaulting and verbally abusing her regularly in an inebriated state. It is alleged that he demanded fridge, sofa, money etc. and when P.W.2 failed to meet his demands, he assaulted her by slapping her, kicking her and even attempted to choke her. It is also alleged that his demands were met to some extent which P.W.1 purportedly paid up to satiate his greed. It is lastly deposed that P.W.2 subsequently left his house fearing her life and since 2018 has been residing with her parents.

14. It transpires after a thorough scrutiny of their evidence that the allegations levelled are evasive, in the sense that apart from allegations that she was abused for dowry, they have failed to specify when or how the demands for dowry were made or how much money was in fact demanded. Their evidence also lacks any form of corroboration by any independent witnesses which weakens their narrative. Their omissions underlined by the I.O., P.W.4 in his deposition are, in the considered view of this Court, in the nature of contradictions which further dents their credibility. The court is also cognizant of the absence of any medical document highlighting any injuries purportedly sustained, which could establish that she did suffer injuries in consequence of the abuse at the hands of the accused. In this regard, P.W.4, the investigating officer has deposed that the P.W.2 herself had refused to undergo a medical examination. It is also noted that there is a delay of around 2 weeks in registering the F.I.R., for which the Prosecution has omitted to assign any cogent reason. Situated thus, in the absence of any corroboration as to the alleged abuse which could prove cruelty, compounded by lack of a coherent and credible narrative and also after taking cue from the observation made by the Hon'ble Apex Court in the aforementioned case, **this point is decided in negative.**

15. Now the cardinal principle of criminal jurisprudence in India and the standard of proof in any criminal case is that the guilt of an accused has be proved beyond reasonable doubt thereby assigning the prosecution with the principal duty to prove such guilt. In the instant case, based on the holding of this Court in the above point for determination, it is clear that the Prosecution has failed to prove the guilt of the accused beyond reasonable doubt. The evidence on record has left ample scope for reasonable doubt as to the factum of the occurrence alleged that the accused person subjected his wife to cruelty and that he had demanded Dowry.

### **ORDER**

16. In light of the same and after thorough consideration of all the materials on record, the accused persons, Mr. Mintu Borah is found not guilty for the aforesaid offence under Section 498 A, I.P.C. Therefore, the accused person is **acquitted** from this case and set at liberty forthwith.

17. The bail bond of the accused person and his surety shall remain in force for a period of 6 months from today in compliance with Section 437 (A) Criminal Procedure Code.

18. The Case is accordingly disposed of on contest.
19. The Judgment is pronounced in open Court in presence of the accused and his counsel.
20. Given under my hand and seal of this court on this 12<sup>th</sup> day of January, 2022 at Gohpur.

**Typed by me**

**(Mr. Raj Sekhar Duara)**  
**Judicial Magistrate First Class,**  
**Gohpur, Sonitpur**

## **APPENDIX**

### **PROSECUTION WITNESSES:**

P.W.1- Ms. Nalini Borah

P.W.2- Ms. Barnali Borah

P.W.3- Ms. Mina Borah

P.W.4- A.S.I. Mr. Narayan Baruah

### **DEFENCE WITNESS: NONE**

### **PROSECUTION EXHIBITS:**

Exhibit 1: FIR dated 24.08.2018

Exhibit 2: Charge- Sheet

Exhibit 3: Sketch Map

### **DEFENCE EXHIBIT: NONE**

**(Mr. Raj Sekhar Duara)**  
**Judicial Magistrate First Class,**  
**Gohpur, Sonitpur**