

**IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS AT
GOHPUR, SONITPUR**

GR Case No. 171 of 2016

U/S: 498-A of IPC

THE STATE OF ASSAM

-Versus-

Pradip Gowala

(Son of Sri Maheswar Gowala

Vill : Bagor pathar

P.S.- Gohpur

Dist.- Biswanath)

Accused

PRESENT : Diganta Goswami, A.J.S.

Judicial magistrate 1st Class, Gohpur

Date of framing of charges : 01.04.2017

Date of recording of evidence : 25.05.2017, 05.07.2017, 22.05.2018 & 05.07.2018

Date of argument : 25.07.2018

Date of judgment : 30.07.2018

Advocate for the state : The Asstt.P.P.

Advocate for the defence : Mr. T. Chatterjee

JUDGMENT

1. The case of the prosecution is that informant Smt. Moni Gowala of Village Bagor Pothar lodged an FIR at the Gohpur Police Station on 02.07.2016 against her husband Pradip Gowala and four other family members namely Maheswar Gowala, Geeta Gowala, Bohagi Gowala and Ami Gowala. She alleged that her husband had tortured her in demand of money and dowry since six months ago. She also stated

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that she was married to her husband for the last 9 years and on 23.06.2016 at about 9 a.m. her husband and the other family members beat and drove her out of home. Therefore, she lodged the *ejahar* seeking justice for her.

2. The FIR was received and registered vide Gohpur Police Station case No. 150/16, u/s 498-A of IPC, dated 02.07.2016. A.S.I. Sri Chittaranjan Paul was entrusted with the task of preliminary step of the investigation and Sub-inspector Mahendra Nath Gogoi was asked to complete the investigation.
3. Charge-sheet was submitted against Pradip Gowala u/s 498-A of the Indian Penal Code. The other persons of the family of the accused whose names were mentioned in the *ejahar* were not implicated in the charge-sheet. The accused was released on bail. Police after investigation submitted charge-sheet against the accused u/s 498-A of the IPC. Copy was served to him and charge was framed against him u/s 498-A of the Indian Penal Code accordingly.
4. Evidence of the prosecution witnesses was recorded. Statement of the accused person was recorded u/s 313 of the Cr.P.C. He denied the allegations levelled against him. The accused person declined to adduce defence evidence. I have heard the learned Adl. P.P. and the learned counsel for the defence. I have also carefully gone through all the evidences adduced and have meticulously scrutinised the entire case record.

POINT FOR DETERMINATION

5. Whether the accused person Pradip Gowala, being the husband of the informant Smt. Moni Gowala had subjected her to cruelty by physical and mental torture in demand of dowry and money, thereby committing an offence punishable under section 498-A of the Indian Penal Code?

DECISION, DISCUSSION AND REASONS THEREOF :

6. The prosecution side to prove its case examined 6 (six) witnesses. P.W. 1 Sri Prasanta Gowala stated that the informant was his elder sister. The accused was his brother-in-law. The informant and the accused got married about 10 years back. The accused brought a woman about six months ago and thereafter demanded money from the

informant. As the informant couldn't pay money the accused beat her. They, the family members of the informant went to his house and discussed the matter, tried to make him understand, but even after that he assaulted her. The accused drove the informant out of her home about 4-5 months ago. Then the informant lodged the case. The informant took shelter in their house.

7. In his cross-examination, he stated that he hadn't gone to the house of the accused before the marriage. He denied that the accused had another wife before marriage with the informant. They came to know about it when they worked in N.R.C. in 2015. The accused hadn't beaten the informant before bringing the new woman. When the accused assaulted the informant, they went to his home and advised him but didn't inform the neighbours. He didn't know how much money the accused had demanded from the informant but the informant stated to him that it was about Rupees one lakh. They never gave any money to the accused. They didn't inform the secretary of the VDP and the *gaonburha*. He denied that the informant was the second wife of the accused. He denied that as the previous wife started living with the accused, the informant lodged this case.
8. P.W. 2 Sri Moni Kanta Gowala stated that the informant was his sister and the accused was his brother-in-law. They had married about 12 years ago. In the first 5 to 6 months, it was fine but after that the accused brought home a woman. The accused started torturing the informant physically and mentally thereafter. They went to the house of the accused and tried to settle the things by advising him, still the accused didn't stop torturing her. About a year ago, the accused drove her out from his home. The informant got medical treatment at Gohpur Civil Hospital and lodged a case in the police station.
9. In his cross-examination, he stated that they got their sister married to the accused socially. He didn't go the house of the accused before marriage. He denied that the accused had a wife prior to the marriage with the informant. He didn't know why the accused had beaten the informant. They came to know that the accused had brought a woman and she was his earlier wife. The accused started beating the informant after the woman came. He didn't go to the house of the accused after the accused assaulted the informant. He didn't see the accused beating the informant. They didn't give any money to the accused.

10. P.W. 3 Smt. Moni Gowala, the informant stated that the accused was her husband, she got married with the accused about ten years ago. After 6 years of the marriage, the accused started beating her seeking money. The accused asked her to go out of his home several times, but she didn't go out for the sake of their family. The accused beat her since they had no issue. The accused last beat her on some day of the Assamese *asarh* month and being unable to bear it she came out of his home. She filed a case in the police station. Ext.1 was her FIR and Ext. 1(1) her signature.
11. In cross-examination, she stated that there were houses of Amar Singh Gowala, Sitaram Gowala and Jonti Gowala etc. near their house. If there were any *hullah* at the house of the accused, it would have been heard from the house of Amar Singh Gowala. She knew what was written in the Ext. 1 as it was written as per her words. She hadn't got any medical treatment when the accused assaulted her before filing the *ejahar*. On the day of lodging the case, she got injury in her back and chest and a finger got fractured as the accused assaulted her. She denied that the accused had not demanded money from her and she lodged a false case against him.
12. P.W. 4 Dr. A. B. Roy, the Sub-divisional Medical and Health Officer of Gohpur Sub-divisional Civil Hospital stated that Smt. Moni Gowala, aged 28 years, was examined by Dr. Kritirani Deuri. She was escorted by home guard Nripen Nath from Gohpur Police Station. On examination, no external injury was found. The report was furnished from the medico-legal record book of Gohpur Sub-Divisional Civil Hospital. Ext. 2 was the injury certificate and Ext. 2(1) his signature.
13. In cross-examination, he stated that the report was prepared on the basis of police requisition of Gohpur Police Station and no external injury was found of the injured person.
14. P.W. 5 Raju Gowala stated that Moni Gowala was her cousin and the accused was the husband of the informant. There was a quarrel between the informant and the accused. One day, the informant called him over phone to their home stating that she was harassed by her husband. The informant came to the police station and they also came to the police station. She filed an FIR there. So far as he knew, the accused hadn't beaten the informant. He stated that as the couple was issueless, there emerged some disputes in between them sometimes.
15. In cross-examination, he stated that the couple had some quarrels because they were issueless. The accused hadn't beaten her. His cousin, the informant desired to return

to her husband's home, but due to pressure from her parents' family, she was still at her father's home. Both the families of the accused and the informant maintained relations with each other.

16. P.W. 6 ASI Chittaranjan Paul stated in his deposition that he conducted the investigation. He was working as an ASI in the Gohpur Police Station on 02.07.2016. On receipt of the *ejahar*, the officer-in-charge entrusted him the charge of investigation. He went to the place of occurrence on 02.07.2016 at about 12:30 p.m., interrogated the witnesses and drew a sketch map. The accused was not found at his home. On 05.07.2016, the informant was sent to the court for recording of her statement. On 06.07.2016, the accused was searched for but he was not found. The accused came to the police station on his own on 12.07.2016. He was served notice and sent to the court. On 28.07.2016, he submitted his report of preliminary investigation of the matter before the Officer-in-Charge. The O.C. asked Sub-inspector Sri Bhadreswar Chamuah to continue with the further investigation of the case. He investigated the matter and submitted charge-sheet against the accused u/s 498-A of the Indian Penal code. Ext. 3 was the sketch map of the place of occurrence which he had drawn, Ext. 3(1) his signature. Ext. 4 the charge-sheet submitted by SI Sri Bhadreswar Chamuah and Ext. 4(1) his signature, which he could recognise.
17. In cross-examination, he stated that he didn't interrogate any neighbour of Moni Gowala. He denied that there Moni Gowala didn't marry with the accused. He denied that the accused had demanded Rupees 1 lakh from the informant as unlike stated by Prasanta Gowala. He stated that Moni Gowala didn't state in her FIR that the accused married another woman. There was no fight between them in connection with matters of dowry. The quarrel erupted because they had no issues. He couldn't say whether the accused had brought another woman to his home by marrying her or if that woman had come to the house of the accused as a guest. He stated that the informant had left the house of the accused on her own. He admitted that the persons whom he had interrogated were all from the family of the informant or their relatives. He didn't take statement of any of the independent witnesses. He denied the fact that he had submitted his report by not doing the investigation properly and solely of the basis of the statement of Moni Gowala.

18. The couple was married for long nine years. During the period of this first eight and half years, there was no any case of domestic violence on the informant by the accused. It was alleged that only six months ago, the accused tortured the informant for dowry and money, which looks ridiculous.
19. All the PWs were from the family of the informant. Not a single independent witness was examined. There were neighbours such as Amar Singh Gowala, Sitaram Gowala and Jonti Gowala. Surprisingly, none of the neighbours were examined. If there were some *hullah* or some unpleasant incidents taking place at the house of the accused, certainly the neighbours would have come to know about it. Their depositions would have shed more lights on the incident. The local *Gaonburha* and the secretary of the village Defence Party were also not informed about such quarrels.
20. On medical examination, no external injury was found. This indicates absence of any physical torture on the informant which was alleged.
21. The fact that the accused had married another woman and following that marriage, the accused had started torturing the informant has not been alleged by the informant herself in her deposition. Thus, she deviated from the statement what she had made in the *ejahar*. The Investigating Officer also didn't confirm the allegation. Besides, the prosecution didn't call any independent witness to establish this fact.
22. P.W. 5 Raju Gowala who was the cousin of the informant stated that as the couple was issueless, there erupted some dispute between them out of frustration. He denied that the accused had ever beaten the informant. He stated that the informant return to her husband's house, but due to family pressure, she didn't. He also added that there was still family relation between the accused and the informant.
23. The Investigating Officer stated that he didn't find any evidence of the fact that the accused had ever demanded Rupees one lakh to the informant, unlike alleged by PW Prasanta Gowala. He added that there was no fight between the accused and the informant in matter of dowry. Sometimes, quarrels took place as they were issueless. He stated that the informant was not driven out of the home by the accused, instead she had herself left the accused's home.
24. The object of section 498-A of IPC is only to curb the vice of cruelty to the married woman by her husband or in-laws. Section 498-A of IPC indicates that in order to hold a person guilty of the offence under this section, Prosecution is required to

establish that the husband or the relative of the husband of a woman had treated her in such a manner, which is likely to drive her to commit suicide or to cause grave injury or danger to life, limb or health or that the harassment towards the woman was with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or on account of failure by her or any person related to her to meet such demand. In the light of the above provisions, prescribed by Section 498-A of IPC, it can be well said that to constitute "cruelty", it has to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels can't be termed as 'cruelty' to attract the provisions of Section 498-A IPC.

25. In view of the foregoing ratio and discussions so made, it can be held that the Prosecution has failed to establish that the informant was subjected to demand of dowry or that she was mentally and physically harassed. The informant is totally confused as to what actually happened to her and what allegations she had brought against the accused.

ORDER

Considering the discussion made above, it can be safely presumed that the prosecution has failed to prove beyond reasonable doubt that the accused persons had subjected the informant to cruelty as defined under Section 498-A of the Indian Penal Code.

Situated so, the accused person namely Sri Pradip Gowala, on benefit of doubt, is acquitted of the charge under section 498-A of IPC. He is set at liberty.

The bail bond of the accused person is extended for six months from today under section 437 of the Cr.P.C.

The case is disposed of on contest.

Given under my hand and seal of this Court on this 30th July, 2018 at Gohpur.

DIGANTA GOSWAMI
JMFC, GOHPUR

ANNEXURE**Witnesses for the Prosecution:**

PW 1 Sri Prasanta Gowala
PW 2 Sri Monikanta Gowala
PW 3 Smt. Moni Gowala
PW 4 Dr. A. B. Roy
PW 5 Sri Raju Gowala
PW 6 Sri Chittaranjan Paul

Witness For The Defence: NIL

Exhibits :

Ext. 1 - F.I.R.
Ext. 2 - The injury certificate
Ext. 3 - Sketch map
Ext. 4 - Charge-sheet

DIGANTA GOSWAMI
JMFC, GOHPUR