

APPENDIX -12

<p>IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, SONITPUR, TEZPUR</p> <p>Present: Smt. Priyanka Saikia, JMFC</p> <p>(Date of the Judgment)</p> <p>03-11-2022</p> <p>(CASE NO- G.R. 1241/2012)</p> <p>(Details of FIR/Crime and Police Station)</p>	
Complainant	State of Assam or Musstt. Ajufa Begum
Represented By	Smti. Bandhana Boro, Learned APP
Accused person	Md. Dulal Ali S/o- Md. Solman Ali Village- Bhalukjarani P.S.- Tezpur Dist- Sonitpur
Represented by	Shri Dulal Borthakur

APPENDIX -13

Date of offence	19-03-2012
Date of FIR	19-05-2012
Date of charge sheet	31-08-2012
Date of charge frame	19-12-2013
Date of commencement of evidence	07-08-2015
Date on which judgment is reserved	20-10-2022
Date of judgment	03-11-2022
Date of the sentencing order, if any	NIL

Accused Details

Rank of Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention undergone during Trial for purpose of Section 438, Cr.P.C.
A-1	Md. Dulal Ali	NIL	09-05-13	Section 498(A) of IPC	Acquitted	NIL	NIL

APPENDIX -14**LIST OF PROSECUTION / DEFENSE / COURT WITNESSES****A. Prosecution:**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Md. Maharuddin	Other witness
PW2	Phul Banu Begum	Other witness
PW3	Araj Ali	Other witness
PW4	Dr. Hemanta Koch	Other witness
PW5	Shri Jagadish Ch. Debnath	Other witness

B. Defense Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

LIST OF PROSECUTION/ DEFENSE/ COURT EXHIBITS**A. Prosecution:**

Sr. No	Exhibit Number	Description
1	Ext. 1	Medical report
2	Ext. 1(1)	Signature
3	Ext. 2	Complaint petition
4	Ext. 3	Sketch Map
5	Ext. 3(1)	Signature
6	Ext. 4	Charge sheet
7	Ext. 4 (1)	Signature

B. Defense:

Sr. No	Exhibit Number	Description
NIL	NIL	NIL

C. Court Exhibits:

Sr. No	Exhibit Number	Description
NIL	NIL	NIL

D. Material Objects

Sr. No	Exhibit Number	Description
NIL	NIL	NIL

JUDGMENT

1. The case of the prosecution story in brief is that A-1 is Complainant's husband and after 1/2 months of their marriage, he started to inflict mental and physical torture upon her. A-1 used to drink regularly at night and abused and assaulted her. More so, he demanded money from the complainant for gambling. Finding no option, she brought Rs. 3,000/- from her parents and gave to the accused person. When, A-1 wasted all money, he again demanded Rs. 10,000/- from her parents. Complainant's parents are poor people, so unable to fulfil A-1's demand. A-1 always uttered obscene words to the complainant and one day he called his mother-in-law and sent the complainant from his house to her parental house. Hence, this case.

2. The complainant filed a complainant case before the learned CJM, Sonitpur and thereafter exercising power under Section 156(3) CrPC, the case was forwarded to Tezpur PS for investigation. On receipt of the complaint petition, Tezpur P.S. Case No 702/2012 under Sec.498 (A) of I.P.C. was registered and investigated into. After completion of the investigation the police submitted charge-sheet against A-1 under Section 498(A) of IPC.

3. In pursuance to summons issued, A-1 appeared before this court and was allowed to go on bail.

4. A-1 entered trial and after furnishing the copies of the relevant documents in compliance with Section 207 of Cr.P.C and upon finding sufficient materials against him, charge under Section 498(A) of IPC was framed and was explained to him to which he pleaded not guilty and claimed to be tried.

5. The prosecution examined five witnesses. The statement of A-1 under Section 313 of Cr.P.C was recorded and he denied the allegations made against him. Defence declined to adduce evidence. I have heard the arguments for both sides.

6. Upon hearing and on perusal of the case record I have framed the following points for determination-

(I) Whether, A-1 had committed mental and physical tortures on the informant demanding dowry and thereby committed an offence under Section 498(A) of IPC?

DISCUSSION, REASONS AND DECISION THEREOF:

7. PW-1/Md. Maharuddin in his evidence of chief deposed that complainant was his daughter and A-1 was his son-in-law. After 5/6 months of their marriage, his daughter leave A-1's house as he always drunk and assaulted her.

In his cross examination PW-1 deposed that his daughter told him that A-1 always came home in drunken state and assaulted her. He also deposed that no other people of that village, has told him that he was a drunker.

At the time of the evidence, his daughter separated from A-1 through Talaq.

8. PW-2/ Phul Banu Begum in her evidence-in-chief deposed that complainant was her daughter and A-1 was her son-in-law. A-1 had some illicit relation with other girl and assaulted her daughter, therefore PW-2 took her daughter to their home. At the time of evidence, her daughter was married to another person at Jorhat and was a mother of a baby.

In her cross examination PW-2 deposed that when there was a quarrelled between her daughter and A-1, PW-2 taken her daughter to their home. After some time her daughter married to one Muktul Hussain and therefore, she has no intention to proceed with this case.

9. PW-3/Araj Ali in his evidence-in-chief deposed that complainant his sister and at the time of evidence, his sister was married to some other person.

10. PW-4/Dr. Hemanta Koch in his evidence of chief deposed that Ext.1 is the medical report that he had examined the complainant and found no injury upon her body.

11. PW-5/ Shri Jagadish Ch. Debnath in his evidence deposed that on 19-05-2012, he was posted as attached officer in Borghat O.P. The informant has filed a complaint case before the CJM, Sonitpur and accordingly the case

was transferred to the Tezpur P.S. for investigation. After receiving the case record the case was registered as Tezpur P.S. 702/2012 under Section 498(A). He went to the informant's paternal house and recorded her statement. Thereafter he visited the place of occurrence and recorded statement of the witnesses and prepared a sketch map. He did not get A-1 on the place of occurrence. He visited twice on the place of occurrence but he did not get him. After receiving the case record the informant was sent for medical examination. He had also collected the medical report. As he did not get A-1 on the time of investigation therefore he was declared as an absconder and submitted the charge sheet against him under Section 498(A). P.Ext.1/PW5 is the medical report. P.Ext.2/PW5 is the complaint petition. P.Ext.3/PW5 is the sketch map. P.Ext.3/PW5 is his signature therein. P.Ext.4/PW5 is the chargesheet.

In his cross examination he deposed that it was not a fact that without having the specific materials under Section 498(A) he had submitted charge sheet against the A-1.

12. The essence of the offence under Section 498(A), IPC, lies in the Explanation to Section 498(A), which defines cruelty as follows. 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.

13. As per clause (a), the situation created by the conduct of the accused must be such which the accused knows that it would drive the wife to commit suicide or would cause grave injury or danger to her life, limb or health. The injury or danger to health has been qualified by the words 'mental' and 'physical'. The word 'likely' appearing in clause (a) conveys the idea that accused has knowledge that his conduct would result in the consequences envisaged therein.

14. Clause (b) speaks of harassment to the wife. The word 'harassment', I believe, has been used in its common dictionary meaning whereby a wife is continuously tormented with demands of dowry, irrespective of the fact whether such unlawful demand is accompanied by any physical torture.

15. The instant case is one which the prosecution wants to cover by clause (b). Thus, to warrant conviction of the accused for the offence under section 498(A), IPC, the prosecution will have to prove that there was a systemic

torture upon the victim by the accused in connection with his unlawful demand of dowry.

16. Now, PW-1 has definitely alleged unlawful dowry demand. The complainant has also alleged accompanying physical abuse. However, the allegation is found to be quite vague. PW-1 has alleged that the A-1 in drunken state assaulted complainant for demanding money. He has also not made it clear if the assault was a solitary incident or there were multiple occasions of assault. That was very essential in order to prove systemic harassment. Unfortunately the prosecution evidence is found wanting in this regard. The evidence of PW-1 is found to be very brief and limited. While I do not expect him to narrate the exact dates when he was not present there. Some amount of specificity would have helped. Brevity is not always a virtue. Just as unnecessary verbosity creates doubt as to the authenticity of contents, so does too much brevity and obscurity.

17. PW-2 and PW-3 were mother and brother of the complainant and deposed in their cross-examination that the complainant remarried with another person.

18. In this instant case, perusal of the Ext.1, the Medical report reveals that no injury was found by the doctor. Thus, it is evident that there is no any instance of cruelty, meted out to the complainant wife by the accused husband is mentioned specifically by the complainant in her

complaint petition as per the section 498(A) of IPC. There must be continuity of torture to the wife by husband on the pretext of dowry or if not on the pretext of dowry, then it must be such as for meeting any unlawful demand by the accused husband so as to compel the informant to commit suicide or grave injury to her life, limb or health. Only one instance of cruelty is not sufficient. There must be continuity as per the section 498(A) of IPC.

19. Prosecution also failed to bring the star witness of this case i.e. the complainant.

20. Thus there is absence of evidence regarding grave injuries or danger to life, limb, or health of the woman as contemplated by Explanation (a) of 498 (A) of IPC and there was also absence of evidence regarding demand for dowry harassment. This indicates that the cruelty as contemplated by Explanation (b) of Sec. 498(A) IPC has not been proved by the prosecution beyond reasonable doubt. So, A-1 cannot be convicted under Sec. 498(A) IPC.

21. Considering all the above aspects as well as the nature of the offence alleged, this court is opinion that the prosecution case cannot be said to have been proved merely on the basis of the informant and her father without there being any independent witness to the incident.

22. From discussion of the aforesaid evidence, it is held that the prosecution has miserably failed to bring home the guilt of A-1 beyond all reasonable doubt. The ingredients of the alleged offence Sec. 498(A) has not been proved against A-1.

23. So the point for determination is negative.

ORDER

24. Situated thus, A-1 Md. Dulal Ali, is acquitted of the offence under Section 498(A) of IPC and set at liberty forthwith.

25. The bail bond of A-1 shall remain in force for 6 (six) months from today by virtue of Sec. 437(A) Cr.P.C.

Given under my hand and seal of this court on this 3rd day of November, 2022 at Sonitpur, Assam.

(Priyanka Saikia, AJS)
Judicial Magistrate 1st Class
Sonitpur, Tezpur