

**APPENDIX -12****IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS****Present:** Smt. Darshana Nath, JMFC, SONITPUR, TEZPUR**[Date of the Judgment]**

23.12.2022

[ GR Case No.3175 of 2016]

(Details of FIR/ Crime and Police Station)

<b>COMPLAINANT :</b>	State of Assam Or Palashi Borah D/o- Biren Borah W/o- Saurav Sagar Borah R/o- Rangagorah Huz, P.S.- Nagaon Sadar, Dist.- Nagaon (Assam)
<b>REPRESENTED BY</b>	Smti Niva Devi, Ld. A.P.P.
<b>ACCUSED</b>	Saurav Sagar Borah S/o- Biman Ch. Borah R/o- Majgaon, P.S.- Tezpur, Dist.- Sonitpur (Assam)
<b>REPRESENTED BY</b>	Nayanmoni Goswami, Ld. Counsel.

**APPENDIX -13**

Date of Offence	11-05-2016
Date of FIR.	12-05-2016
Date of Charge-sheet	30-09-2016
Date of framing of charge	14-11-2017
Date of commencement of evidence	20-02-2018
Date on which judgment is reserved	23-11-2022
Date of the Judgment	23-12-2022
Date of the Sentencing Order, if any	One year rigorous imprisonment with fine of Rs. 10,000/- (Ten thousand rupees only) each in default to undergo rigorous imprisonment (R.I) for 15 (Fifteen) days for the offence under section 498A Indian Penal Code.

**ACCUSED DETAILS:**

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offence charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention undergone during Trial for purpose of Section 438, Cr.P.C.
A1	Saurav Sagar Borah	Nil	Nil	U/S 498(A) of IPC	Convicted	Nil	Nil

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

**PRESENT: DARSHANA NATH, MA, LL.M.,  
JMFC, Tezpur, Sonitpur**

**G.R. Case No. 3175/2016**

**U/S 498A IPC**

**STATE**

**VS.**

**Saurav Sagar Borah**

FOR PROSECUTION: Smti Niva Devi, Ld.A.P.P.

FOR THE ACCUSED : Nayanmoni Goswami, Ld. Counsel.

EVIDENCE RECORDED ON: 12-12-2022.

HEARD ARGUMENT ON: 12-12-2022.

JUDGEMENT DELIVERED ON: 23-12-2022

**JUDGMENT**

1. The ejahar was lodged by the informant on 12/05/2016 alleging *inter alia* that on 28/11/2013 she got married to the accused A1 as per Hindu Rites and rituals. After 3 days of marriage, accused A1 started to torture her physically by demanding dowry of Rs. 2,00,000/-. On 11/05/2016, accused A1 along with his family members tried to kill her by pressing her neck, but she somehow saved herself. On the date of filing

FIR, at morning 5 am, she along with her was thrown out of his house and she had been staying at her parental house since then.

- 2.** Police on receiving the ejahar registered the same as Nagaon Sadar P.S. Case No 1176/16 u/s 498A IPC and started investigation of the same. Then case was transferred from Nagaon to Tezpur Court and on completion of investigation, police submitted the charge sheet against the accused person A1 u/s 498A IPC.
- 3.** Cognizance of the offence was taken and accordingly summons was issued to the accused person. On appearance, the copies were furnished to the accused persons.
- 4.** Formal charges are framed in separate sheet and particulars of offence were explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 5.** During the trial, prosecution has examined seven witnesses. Statement of the accused person is recorded under Section 313 CrPC, but the accused person has failed to adduce evidence in his support.

6. I have heard the arguments advanced by the learned Counsel of both sides and carefully perused the evidence on record.

**POINTS FOR DETERMINATION:**

- a) **Whether the accused person committed cruelty to the informant and thereby committed offence u/s 498A IPC?**

**DISCUSSIONS, DECISIONS AND REASONS THEREOF**

7. PW-1 in his evidence stated that he knew both the informant and the accused person as they are his neighbours. He stated that the accused and informant got married three years ago, but he did not hear any kind of dowry demand on the part of accused A1. The cross examination was declined.
8. PW2 stated that she knew both the informant and the accused person as they are her neighbours. She stated that the accused and informant got married in 2013 and a girl child was born out of their marriage. She did not know about dowry demand allegedly made on the part of the accused person. She had never seen any quarrel between informant and the

accused person. In cross examination, she made same statement as that of examination-in-chief.

**9.** PW3 stated that she is the informant of the case and she is the wife of the accused person. My learned predecessor inadvertently recorded that the informant filed the case on 12/05/2015 in evidence, but the FIR filed by the informant reveals that she filed the case on 12/05/2016. Hence, it is considered that the FIR was filed positively on 12/05/2016 and hereinafter it will be written as 12/05/2016. She stated in her evidence that she got married to the accused on 28/11/2013 as per Hindu rites and rituals. After one day of marriage, the accused questioned her as to why she did not bring silk "*mekhela sador*" for his aunt. He used to tell her that she was not beautiful and he regretted to marry her. He used to tell her that he would get better girl. He used to assault her as she did not bring washing machine at the time of marriage. The mother of the accused humiliated her by telling that she has brought duplicate furniture as dowry. The accused threw the aqua guard brought by the informant at the time of marriage. The accused asked her to bring money from her brother as he wanted to go to Darjeeling. She brought money from her father and she along with the accused went to Darjeeling. She stated that the accused threw her out of the hotel room in Darjeeling on a silly dispute at 2

am. She informed the hotel manager and then the accused opened the door. When they were in Darjeeling, their money came to end and the accused asked her to tell about it to her brother. The accused one day threw tea on her body, but she did not sustain any injury as she wore sweater at that time. After 6 months of marriage, the accused called her "*baji*" (sterile) as she did not give birth to child at that time. She then became pregnant and at her 5 months of pregnancy, she came to her parental house. At her pregnancy also, the accused beat her. On 01/06/2015, she gave birth to a girl child. The mother of the accused pinched her stitched area of delivery operation and when she complained about it to the accused, the accused ignored it. After delivery, she came to the house of the accused, then the accused demanded her some land to start business. When she refused, he assaulted her. On 11/05/2016 at night 10 pm, he after taking alcohol, closed the door and pulled her neck and asked her to bring Rs. 2 lakhs, or else he would marry another girl by divorcing her. On the next day morning at 5:30 am, the accused threw her out of his house and the accused called her mother over phone and asked to keep her daughter. She then came to police station and filed a case at Nagaon Sadar PS against the accused.



**10.** In cross-examination, she stated that she knew Maram Haloi, Das Aunty as neighbours of her husband, i.e., the accused. She told about the physical tortures to Maram Haloi and Das Aunty. She stated that the neighbours did not hear the fights as the accused used to beat her in closed door. She stated that she did not tell about the insults made by the accused for silk "*mekhela sador*" to her parents. She forgot the date when the accused beat her coming from Guwahati, neither she could remember the date when the accused fought with her for washing machine and threw the aqua guard. She stated that on 26/07/2014, she and the accused went to Darjeeling and did not show any tickets to the Police. She forgot the date when the accused threw tea on her body and stated that she did not sustain any injury as she wore sweater on that day. She stated that when the accused fought with her at her parental house, no one saw the fights. On 12/05/2016, she told everything to her parents what was happening with her. She did not consult with the doctor when the accused punched her at Darjeeling. When the accused beat her on her neck, head, cheek and back on the day before filing FIR, she was medically examined by the Police at Nagaon Civil Hospital. She stated that on 11/05/2016, when the accused beat her, the accused's uncle was present on the spot.

**11.** She stated that accused was working as battalion and he stayed at Guwahati. The accused was working as security guard of the then Chief Minister of Assam. Her mother-in-law was also working as police. She stated that she was staying at her matrimonial home and her mother and brother often came to meet her. She did not tell anything about the physical and mental torture to her mother inflicted by the accused. She denied the suggestion that she did not tell about the physical and mental tortures inflicted by the accused as she mentioned in the examination-in-chief to the police.

**12.** PW4 and PW5 stated that they do not know anything about the dispute between the informant and accused person. They stated that they are neighbours of the accused person and informant.

**13.** In cross-examination, PW5 stated that he did not hear any quarrel on the day of incident from the house of the accused person and the accused was at Guwahati on that very day.

**14.** PW6 is the investigating officer of the case. He stated that he went to the place of occurrence on 23/09/2016. He did not seize anything from the place of occurrence. He stated that the accused tried to flee away, but later he appeared at the police station.

**15.** In cross examination, he stated that at the time of investigation, the medical examination of the victim was not required and therefore he did not conduct the examination of the victim/informant. He did not know whether the medical examination of the victim was conducted at Nagaon or not, where she firstly filed the FIR. He denied that the informant/PW3 adduced all evidence given by her at examination-in-chief.

**Analysis of Evidence:**

**16.** Section 498A IPC reads as:

*"Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*

*Explanation— For the purpose 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."*

- 17.** Cruelty is the essence of section 498A IPC. This provision has given new dimension to the concept of cruelty. It can either be mental or physical, either intentional or unintentional. The concept of cruelty is subjective. It varies from place to place and from individual to individual depending upon the social and economic status to which such person belongs to.
- 18.** It is clearly mentioned in section 498A IPC, explanation (a) that "***danger to life, limb or health (whether mental or physical) of the woman***". According to WHO, health includes not only physical health, but also mental health. A healthy man means he is mentally and physically fit. A physically strong man may not be considered as healthy, unless his mental health is in better state.
- 19.** To constitute an offence, there must be mens rea i.e., ill intention. The maxim "*actus non facit reum, nisi mens sit rea*" which means that an act does not amount to guilt, it must be accompanied by a guilty mind. The constituent of offence under

section 498A IPC must be a wilful conduct on the part of the offender. Though intention to cause injury is not an essential ingredient in this section, there must be knowledge on the part of the offender that his act would cause injury to physical and mental health of his spouse.

**20.** In my understanding, the acts must be specific to constitute offence under section 498A IPC. Mere allegations of physical and mental torture do not amount to cruelty under this section. In this case, PW3, i.e., the informant as well as victim in her evidence stated that after one day of marriage, accused questioned her as to why she did not bring silk "*mekhela sador*" for his aunt, insulted her by saying that she was not beautiful, he regretted to marry her, he would get better girl. He assaulted her for not bringing washing machine at the time of marriage. These acts are specific and sufficient to constitute offence under section 498A IPC.

**21.** Now come to trustworthiness and reliability of the evidence given by PW3. PW3 in the FIR stated that after three days of marriage, her in-laws instigated the accused by telling her ugly and asking her what she has brought from her parental house as dowry. Her in-laws asked the accused to throw her out and they would convince the accused to marry

another beautiful girl. The accused used to torture her physically and mentally by demanding Rs. 2,00,000/- from her father. Sometimes he physically assaulted her by applying hot spatula on her body. The day before filing the FIR, i.e., 11/05/2016 at night 10:30 pm, her in-laws along with the accused pulled her neck by closing the door of room and tried to kill her. She somehow managed to save herself along with her one year old daughter. On the next day morning at 5:00 am, the accused threw her and her daughter from his house to bring the demanded money.

**22.** In her evidence, she stated that her mother-in-law humiliated her by asking her that she has brought duplicate furniture with her and told her that she was not beautiful which is corroborated with the content of the FIR that her in-laws instigated the accused by telling her ugly and asking her what she has brought from her parental house as dowry. She stated in her evidence that on 11/05/2016, at 10:30 pm, the accused beat her by asking Rs. 2,00,000/- by closing the door and accused's uncle was present at that time and she was thrown at 5:00 am by the accused out of his house on the next day morning which is corroborated with the fact that she was beaten by the accused along with the in-laws by asking Rs.

2,00,000/- in closed door and next day morning she was thrown out of the house along with her daughter.

**23.** She filed the FIR on 12/05/2016 and gave her evidence on 01/04/2019. A person cannot memorize all things in similar way after three years of occurrence of an incident. It is only possible when an incident really happens which affects a person very deeply. PW3 mentioned same things in FIR which she stated in the court as evidence.

**24.** Learned counsel on behalf of the accused argued that she did not mention some vital incidents in the FIR and hence, her evidence cannot be considered as trustworthy. It is quite possible to forget to mention some incidents in the FIR as she was beaten very badly on the night before filing the FIR for which she sustained injury on her head, neck, cheek and back.

**25.** But her medical report was not submitted along with the record. Hence, the court called the first IO of Nagaon Sadar PS as court witness after recording statement of accused u/s 313 CrPC to find out the truth. The IO came and deposed his evidence as PW7. He stated that that he called the informant for medical examination, but she did not come even after the IO called her two times repeatedly over phone. He stated that the informant forced the I/C of

Haiborgaon PS to transfer the case from Nagaon to Tezpur and therefore, he could not find time to investigate the matter.

**26.** On being asked by the court, he could not show any letter or application written by the informant praying to transfer the case from Nagaon to Tezpur. Rather, PW7 prayed before the Hon'ble CJM Court, Nagaon to transfer the case to Tezpur, i.e., Ext. P4/PW7. Hence, as per evidence on record, it is the IO who prayed before the court to transfer the case from Nagaon to Tezpur, not the informant. Moreover, the informant filed the FIR on 12/05/2016 and prayer to transfer the case was made on 17/05/2016 by PW7. It is very unfortunate that a police officer could not manage time to start preliminary investigation within 5 days. He even could not conduct medical examination of the victim in 5 days. Informant/PW3's statement that she was medically examined in Nagaon Civil Hospital contradicted the statement of PW7 that he could not conduct her medical examination.

**27.** PW6 in his cross-examination stated that he did not think it was necessary to conduct medical examination of the victim/PW3 at the time of investigation. When a victim alleges any physical torture, it is the primary duty of police to conduct medical examination of the victim. But, in this case,



PW6 himself decided that there was no requirement of medical examination of PW3. The evidence of PW6 that he did not think necessary to conduct medical examination of the victim during investigation contradicts with the evidence of PW7 that even after repeatedly called the victim, she did not come to the police station and neither she conducted medical examination. Hence, the evidence of both PW6 and PW7 is considered as unsatisfactory and hence, I discard the evidence given by PW6 and PW7..

**28.** When the police start to decide themselves that there is no requirement of medical examination of a victim, it is quite impossible for a victim to get justice. Moreover, police neither prayed before the court to record the statement of the victim u/s 164 CrPC which could have been vital evidence in this case, nor listed the names of vital witnesses- Morom Haloi and Mrs. Das in the charge sheet which PW3 mentioned in her evidence. After analysing evidence on record, I am of the opinion that police has committed gross negligence in investigating the case.

**29.** In country like India, breaking a marriage and leaving husband is very tough decision made by a wife as marriage is considered a very sacred institution. PW3 took that decision on that very night after tolerating all tortures for three years. A person

may feel humiliated and insulted when his or her spouse repeatedly utters the words like "baji" (sterile) and "ugly". In this case, repeated insults made by the accused and his family by telling her "ugly", the accused would get a better girl, she must bring a washing machine, Rs. 2,00,000/- etc. are enough to threat mental health of a woman. She in her evidence stated that her mother-in-law pinched the stitched area after delivery and if she informed about it to the accused, he ignored it. These allegations cannot be considered as just mere allegations, as she mentioned the tortures in a very clear and specifically, not in a pattern way of physical torture.

**30.** Learned counsel of the accused argued that not a single PW gave any evidence in support of the victim which indicates that PW3 falsely filed the instant case. In **Rupali Devi v. State of Uttar Pradesh [(2019) 5 SCC 384]**, the Hon'ble Supreme Court held that- *"Most often the offence of subjecting the married woman to cruelty is committed within the boundaries of the house which in itself diminishes the chances of availability of any independent witness and even if an independent witness is available whether he or she would be willing to be a witness in the case is also a big question because normally no independent or unconnected person would prefer to become a witness for a number of reasons."*

**31.** Evidence of PW3 cannot be discarded only on the ground that other PWs failed to give incriminating materials against the accused person as in this case accused inflicted more mental torture on PW3 than physical torture. People have common view that they should not interfere in a couple's fight. But it does not mean that there is no any violence occurred.

**32.** At a place which is far away from home, when a person threw his spouse from his hotel room at mid night 2 am, the spouse must have felt humiliated and it must have affected her mental health. Such kind of tortures cannot be witnessed, only the victims suffer. Also, these allegations are very specific and clear. The victim/PW3 does not merely depose that accused tortured her mentally and physically. She states both in examination-in-chief and cross examination that how the accused humiliated her by throwing her out of hotel room and how she was compelled to open the door of the hotel room with the help of hotel manager. The statement of PW3 is corroborated with the contents of FIR filed three years ago before she deposed her statement and the statement made in cross examination. Hence, I find no reason to disbelieve the evidence given by PW3.

**33.** Learned counsel of the accused stated that if PW3 had been tortured by the accused immediately after marriage, she must have to file a complaint at earlier times. It is the victim psychology that a victim is unable to understand that she or he is the victim while he or she is being tortured by someone. The victim takes time to understand the sufferings and to raise voice against the wrong committed to his or her. In the instant case also, the victim, i.e., PW3 suffered a lot because of the conduct of the accused and she took time to raise her voice against the offences committed by the accused. It proves that PW3 is the victim and she did not file the case against the accused person falsely. She waited for three years for the sake of her marriage, but when it became intolerable for her, she left her matrimonial house and filed the FIR against her husband.

**34.** In recording statement u/s 313 CrPC, the accused person denied all allegations made against him by PW3.

**35.** Thus, in light of the evidence of PW3, it is my considered opinion that the prosecution has been able to establish beyond any reasonable doubt *that the accused person committed mental and physical cruelty to PW3 by assaulting her for dowry and insulting her worth and dignity.*

**ORDER**

**36.** Considering all facts, I am of the view that accused person A1 is found guilty for the offence punishable under section 498A IPC and convicted accordingly.

**PROBATION**

**37.** It is true that each and every offence is serious and deterrent action is very essential to the maintenance of law and order in a society. Here I have considered the applicability of Sections 3 and 4 of the Probation of Offenders Act to the convicts. At present situation, crimes against women are increasing day by day in the form of rape, domestic violence, molestation, torture, sexual harassment etc. Such crimes have physical and psychological impact on women which preventing them from leading a standard life. It is a right of every woman to live a dignified and respectable life. Women contribute to the health and productivity of whole family. It is the responsibility of every citizen to make the women feel safe in our society.

**38.** To curb crimes against women, strict punishment is necessary against the offenders. Fear of punishment prevents the law breakers from violating the law.

Woman safety is the need of an hour. Therefore, condoning such offences will only lead to repetition of the same. Hence, I am disinclined to extend the benefits of Sections 3 and 4 of the Probation of Offenders Act to the convict.

### **SENTENCE HEARING**

- 39.** I have considered the quantum of sentence to be imposed upon him. Section 498A of Indian Penal Code carries punishment of imprisonment of either description for a term which may extend to three years, or with fine, or with both.
- 40.** I have heard the convict on the point of sentence and recorded his statement in separate sheet u/s 248 CrPC. He did not make any objection regarding sentence of imprisonment.
- 41.** The convict A1 has been under trial for almost 6 (six) years. He must have already suffered much. More also, the prosecution side failed to establish previous criminal records of the convict.
- 42.** After considering all, I am of the considered opinion that a sentence of one year (1) of rigorous imprisonment with fine will suffice the ends of justice

for the offence committed under section 498A IPC.  
Accordingly, I sentence the convict A1 to undergo -

-One year rigorous imprisonment with fine of Rs. 10,000/- (Ten thousand rupees only) each in default to undergo rigorous imprisonment (R.I) for 15 (Fifteen) days for the offence under section 498A Indian Penal Code

- 43.** Any period of detention undergone by the convict shall be set off against the term of their sentence as per section 428, CrPC.
- 44.** Bail bonds of the convict A1 shall remain in force for another 6 months from today as per Section 437A CrPC.
- 45.** IO is directed to dispose of the seized articles (if any) in due course of time as per law.
- 46.** Let the fine, if paid, be given to the victim i.e., PW3 as per section 357 CrPC.
- 47.** Let a copy of the judgment be given to the convict immediately free of cost as per the provision of section 363(1), Criminal Procedure Code. The convict is also informed of his right of appeal against

the judgment and the order of conviction and sentence.

Given under my hand and seal of this court on this 23<sup>rd</sup> day of December, 2022.

Typed by me:

Smti. Darshana Nath  
Judicial Magistrate First Class, Tezpur



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

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Khagen Saikia	Other witness
PW2	Ila Tamuli Saikia	Other witness
PW3	Palashi Borah	Informant
PW4	Narayan Das	Other witness
PW5	Anjan Kalita	Other witness
PW6	Tabidur Rahman	Official WITNESS(I.O.)
PW7	Manoj Kr. Bora	Court Witness

**B. Defence Witnesses, if any :**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
Nil	Nil	Nil

**C. Court Witnesses, if any :**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
Nil	Nil	Nil

**LIST OF PROSECUTION/ DEFENCE/ COURT  
EXHIBITS**

**A. Prosecution:**

<b>Sr. No</b>	<b>Exhibit Number</b>	<b>Description</b>
1	Exhibit P1/PW3	FIR
2	Exhibit P1(1)/PW3	Signature of PW3
3	Exhibit P2/PW6	Sketch map
4	Exhibit P2(1)/PW6	Signature of PW6
5	Exhibit P3/PW6	Charge Sheet
6	Exhibit P3(1)/PW6	Signature of PW6
7	Exhibit P4/PW7	Transfer order of the case
8	Exhibit P4(1)/PW7	Signature of PW7

**B. Defence:**

<b>Sr. No</b>	<b>Exhibit Number</b>	<b>Description</b>
Nil	Nil	Nil

**C. Court Exhibits:**

<b>Sr. No</b>	<b>Exhibit Number</b>	<b>Description</b>
Nil	Nil	Nil

**D. Material Objects**

<b>Sr. No</b>	<b>Exhibit Number</b>	<b>Description</b>
Nil	Nil	Nil

Smti. Darshana Nath  
Judicial Magistrate First Class, Tezpur