

**G.R Case No-971 of 2017**  
**(State of Assam Vs Md. Ataur Rahman)**

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR:: TEZPUR**

**G. R. Case No-971 of 2017**

Under section-498(A) of I.P.C

Present:- **Sri N. J. Haque, AJS,**  
**Chief Judicial Magistrate,**  
**Sonitpur, Tezpur**

State of Assam

–Vs–

Md. Ataur Rahman

S/O:- Md. Ishab Ali

R/O- No-2, Jorgarh

P/S:- Tezpur

Dist:- Sonitpur, Assam

Accused Person.....

**Advocate appeared:**

Mr. N. K. Mishra, Addl. P.P..... For the State

Mr. S. Rajbongshi & Anr, Ld. Advocates.....For the accused person

Evidence recorded on :- 03.10.2019, 29.01.2021, 06.03.2021,  
& 23.12.2021

Date of Statement of defence :- 06.01.2022

Argument heard on :- 06.01.2022

Judgment delivered on :- 06.01.2022

**J U D G M E N T**

**History of Prosecution's Case**

1. Prosecution's case appears to be in a narrow campus is that one Must. Sabina Khatoon, lodged an ejahar before the O/C of Tezpur PS through the In-charge of Borghat Police Outpost alleging inter alia that she got married with accused around seven months back as per socially and after two months of marriage, the accused tortured her both mentally and physically by demanding dowry. It is also stated that on 13.03.2017 at about 05:30 PM, the accused again demanded dowry from her with the instigation of her in-laws and due to non-

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fulfilment of the demands, accused physically assaulted her and due to that she sustained injuries on her person. It is further stated that accused aborted her two months pregnancy by giving tablets.

**"INVESTIGATION"**

2. On receipt of the ejahar, the O/C of Tezpur PS registered a case vide Tezpur PS Case No-501 of 2017 under section-498(A)/312 of IPC and investigation into. On completion of the investigation, the Investigating Officer of this case has submitted charge-sheet under section-498(A) of I.P.C against the above-named accused person.

**CHARGE**

3. In pursuant to the court's process, the accused person appeared before the court and he was allowed to go on bail. Copies u/s-207 of Cr.P.C was furnished to the above named accused person. After hearing both side, charge of offence u/s-498(A) of I.P.C. were read over and explained to the accused person by my Ld. Predecessor in office, on which he pleaded not guilty and claimed to be tried.

**TRIAL & STATEMENT OF DEFENCE**

4. The prosecution side to prove the guilty of the accused person examined as many as five numbers of witnesses including the informant-cum-victim, the investigating officer and the medical officer in support of this case. Considering the testimonies of the witnesses, prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Accused person was examined u/s-313 of Cr.P.C and his pleas of denial are recorded in separate sheet and the same kept with the case record. Accused declined to adduce evidence on his defence.

**ARGUMENT**

5. I have heard arguments of both sides, gone through the case record in the background of indications obtainable before this court by prosecution side.

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6. **The points for determination in this case:-**

Whether on or before 13.03.2017 at about 05:30 PM at a place called No-2 Jorgarh under Tezpur PS, the accused being the husband of the informant named Must. Sabina Khatoon had subjected her to cruelty and harassed her physically or mentally with a view to coercing her to meet any unlawful demand for dowry or is on account of failure by her to meet such demand and thereby committed an offence under section-498(A) of I.P.C?

**EVIDENCES OF PROSECUTION SIDE:-**

7. In this case prosecution side to prove the disputations of the ejahar examined as many as five numbers of witnesses including the informant-cum-victim, the medical officer and the investigating officer and for the sake of proper appreciation of evidences on record let us reproduce the evidences on record.
8. PW-1, Must. Sabina Khatoon being the informant-cum-victim of this case deposed that the accused is her husband. She also deposed that she got married with the accused in the year 2016 and thereafter, both started leading their conjugal life. She further deposed that after marriage, the accused started torturing her both mentally and physically by demanding dowry from her and on being came to know about the same, the village people settled the matter between the parties. She further deposed that in the year 2017 the accused drove her out from her matrimonial house by way of physically beating her. Thereafter, the accused again married another woman and in this regard she lodged the ejahar before the police station. She identified her ejahar as Ext-1 wherein she put her signature as Ext-1(1).
9. PW-1 in her cross-examination testified that she got married with the accused as per her own choice. She also deposed that in the year 2017 the accused started demanding dowry from her. She further deposed that she frequently visited to her parental house. She also deposed that the accused got married with another woman after two days of lodging the ejahar. She further deposed that she had maintained love affair with the accused and thereafter, she wilfully

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went with the accused. She denied the fact that she had not stated before the police that accused physically assaulted her by demanding dowry.

10. PW-2, Md. Ismail Ali deposed before the court that he knows the informant and the accused of this case and both are husband and wife. She also deposed that he does not know anything about the incident. He deposed that he only heard that now, the wife of accused not resides with him. He deposed that he does not know where the informant is presently residing. The cross-examination of PW-2 was declined by the defence side.
11. PW-3, Must. Masuda Khatoon deposed before the court that she knows the informant and the accused of this case. She also deposed that she does not know anything about the incident. The cross-examination of PW-3 was declined by the defence side.
12. PW-4, Dr. Zulfiker Ahmed being the medical officer of this case deposed before the court on 15.03.2017, he was posted at Panchmile PHC as Medical and Health Officer No-1 and on that day at about 11:30 AM, he examined one Must. Sabina Khatoon wife of Ataur Rahman on police requisition. He also deposed that on examination, he found no external injury on her person but he has not noted any internal injury in his report. He identified his report as Ext-2 wherein he put his signature as Ext-2(1). The cross-examination of PW-4 was declined by the defence side.
13. PW-5, ASI Naren Boro being the investigating officer of this case deposed before the court that on 17.03.2017, he was posted at Borghat Police Outpost as ASI and on that day, informant Sabina Khatoon lodged an ejahar before the In-charge of Borghat Police Outpost entered GDE No-289 dated-17.03.2017 and forwarded the same to Tezpur PS for registering a case. Thereafter, the O/C of Tezpur PS registered the same as Tezpur PS case No-501 of 2017, under section-498(A)/312 of IPC and endorsed him to investigate the case. He also deposed that he drew sketch map of the place of occurrence, recorded the statement of the witnesses and sent the victim for medical examination. He identified the sketch map as Ext-3 wherein he put his signature as Ext-3(1). He

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further deposed that he collected the medical report of the informant and apprehended the accused person. He also deposed that on conclusion of the investigation charge sheet was submitted by Labanya Bezbaruah. He identified the charge sheet as Ext-4 and Ext-4(1) is the signature of Labanya Bezbaruah. The cross-examination of PW-5 was declined by the defence side.

**DISCUSSION, DECISION AND REASONS FOR SUCH DECISION**

14. The essence of the offence under Section-498(A) of Indian Penal Code, 1860, 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. (c) The definition of cruelty, provided in the Explanation, as reproduced above, is replete with the idea of a continuous and wilful conduct on the part of the husband or his relative towards the wife. The offence conceived of is not a single episode but a series of episodes of violent nature which is likely to result in the following consequences.
- 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
15. Thus, the situation, created by 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 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 in clause (a).

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16. The second clause speaks of harassment to a wife. The word harassment, I believe, has not been used in its exact dictionary meaning rather used in the understanding of common parlance whereby a wife is continuously tormented with demands of dowry, irrespective of the fact whether such unlawful demand is accompanied by any physical torture.
17. Thus, it would be seen that if the prosecution seeks to prove a charge for the offence u/s-498A of IPC, it is required to prove either of the circumstances envisaged in clause (a) or (b). It may be noted here that proof of cruelty would be satisfied by proving either of the circumstances in clause (a) or (b). This case as per the contention of ejarah allegedly comes under the purview of clause (b) of Section-498(A) of IPC.
18. In the light of the law understood, as above, it would be now necessary to look into the prosecution evidence as to whether the evidence meets the requirement of law. The Hon'ble Supreme Court in **Babu Singh VS. State of Punjab 1964 (1) CrL. L.J 566 (SC)** has observed that in a criminal trial the presumption of innocence is a principal of cardinal importance and so the guilt of the accused must in every case be proved beyond a reasonable doubt. Probabilities, however, strong and suspicious, however gave, can never take the place of proof.
19. In **Sarwan Singh Ratan Singh V/S State of Punjab, AIR 1957 S.C 637**, the Hon'ble Supreme Court has observed that there may be an element of truth in the prosecution story against the accused considered as a whole the prosecution story against accused "may be true" but between "may be true" and "must be true" there is inevitably a long distance to travel and whole of the distance must be covered by the prosecution by legal, reliable and unimpeachable evidence before an accused can be convicted.
20. Hence, in the upcoming discussions, it needs to be looked upon whether the prosecution side able to adduce any legal, reliable and unimpeachable evidence before court upon which the accused person of this case may be convicted. In this case prosecution side examined as many as seven numbers of witnesses

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out for which PW-1 is the informant-cum-victim of this case, PW-2 & PW-3 are the neighbours of the informant, PW-4 is the medical officer and PW-5 is the investigating officer of this case.

21. In this case prosecution sets in motion against the accused person over an incident as alleged by the informant-cum-victim that she got married with accused around seven months back as per socially and after two months of marriage, the accused tortured her both mentally and physically by demanding dowry. It is also stated that on 13.03.2017 at about 05:30 PM, the accused again demanded dowry from her with the instigation of her in-laws and due to non-fulfilment of the demands, accused physically assaulted her and due to that she sustained injuries on her person. It is further stated that accused aborted her two months pregnancy by giving tablets. Hence, the prime accusation appears to be the physical assault in demand of dowry and driving her from her matrimonial house by the accused. The ejahar has been lodged by the informant herself and she also pleaded some other facts regarding her physical tortured by the accused person in demand of dowry. There is no specific demand of dowry stated by the informant in her ejahar. She simply pleaded that the accused person has demanded dowry after inflicting the physical torture earlier.
22. The prosecution side has got the burden of prove to establish the aforesaid contention by adducing credible evidences. This Court has meticulously perused the evidences on record and prior to entering into the evidences presented by the independent witnesses, this court deem it fit and proper to appreciate the evidence presented by the informant-cum-victim for determining the point for determination in accordance with law.
23. PW-1, Must. Sabina Khatoon being the informant-cum-victim of this case deposed that she got married with the accused in the year 2016 and thereafter, both started leading their conjugal life. She also deposed that after marriage, the accused started torturing her both mentally and physically by demanding dowry from her and on being came to know about the same, the village people

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settled the matter between the parties. She further deposed that in the year 2017 the accused drove her out from her matrimonial after beating her. Thereafter, the accused again married another woman and in this regard she lodged the ejahar before the police station. There is no specific date in demand of dowry as stated by the informant in her ejahar.

24. The fact of driven out from her matrimonial house in the year 2017 after beating her had not been pleaded by the informant in her ejahar. There is no specific date of incident stated by informant in her evidence-in-chief. Furthermore, PW-1 appears to be contradictory with her own contentions by way of testifying in her ejahar that on 13.03.2017 at about 05:30 PM, the accused again demanded dowry from her with the instigation of her in-laws and due to non-fulfilment of the demands, accused physically assaulted her and due to that she sustained injuries on her person. Even though, the medical officer who examined the informant-cum-victim has been examined in this case as PW-4 and on examination, he submitted his medical report vide Ext-2 and it is seen that no external or internal injuries found upon the body of the victim. In a case where a victim supposedly physically assaulted by way of inflicting physical injury to her, the victim ought to have received at least a superficial injuries or abrasion etc. But in this case no sort of injuries detected from the body of the victim as per medical report issued by PW-4. That part of her evidence makes the entire contentions of the ejahar contradictory and doubtful in nature. She further claimed in her ejahar that accused aborted her two months pregnancy by giving tablets. If really the incident as claimed by the informant took place she must have lodged ejahar immediately after the incident before the nearest police station.
25. PW-1 further claimed in her evidence that the accused again married another woman after being driven her out from her matrimonial house. The fact of another marriage done by accused had not been pleaded by the informant in her ejahar. In this case, if any incident of like accused got married another woman and the informant being the sole eye witness to said fact must have

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mentioned and identified the name of the said woman in her ejahar as well as in her evidence and those facts which she had not stated appears to be the material omissions on her part with her earlier statement and those material omissions articulates her evidence to be full of exaggerations turning down her testimony to be contradictory with her statement which she had made before the police and before the magistrate after the incident.

26. The ejahar has been lodged by the informant-cum-victim herself and she also pleaded some other facts regarding the accused aborted her two months pregnancy by giving tablets and the informant being the sole eye witness to that fact must have mentioned in her evidence and that fact which she had not stated appears to be the material omissions on her part with her earlier statement and those material omissions articulates her evidence to be full of exaggerations turning down her testimony to be contradictory with her statement which she had made before the police and before the magistrate after the incident. Hence the evidence of PW-1 appears to be the contradictory in nature with her own contentions as she has contended in her ejahar as well as in her evidence. The ejahar not being a substantive piece of evidence provides a scope of corroboration or contradiction with its author considering the same to be as her earlier statement.
27. The settled propositions of law never claimed the ejahar to be a substantive piece of evidence. In **"Ram Kumar Pande vs The State Of Madhya Pradesh AIR 1975 SC 1206,"** the Hon'ble Supreme Court observed that an FIR is not a substantive piece of evidence and it can only be used to corroborate the statement of the maker u/s-157 of Indian Evidence Act or to contradict it u/s-145 of Indian Evidence Act. It can only be used for corroboration and contradiction purposes that to when FIR was lodged by a person having direct knowledge about the occurrence. In this case, informant herself admitted that she had lodged the ejahar. If so, then the contradictions disclosed from her evidence, makes her version to be contradictory.

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28. The evidence presented by PW-2 & PW-3 appears to be the hearsay in nature as they had not witnessed the alleged incident. PW-2 & PW-3 in their evidences also did not depose anything directly against the accused person. It is a case of matrimonial dispute in respect of accusation of inflicting physical assault demanding dowry and the people who resides in the same village of the informant-cum-victim do not corroborate with the version of the informant, where she has claimed that she was physically assaulted followed by demand of dowry. That part of his evidence makes the entire case of the prosecution contradictory in nature. PW-5 being the Investigating Officer of this case exhibited the sketch map as Ext-3 and identified the charge sheet Ext-4.
29. In the forgoing discussion, we have already noticed that PW-1 being the informant-cum-victim contradicted most of the material facts of the prosecution story and those contradictions are being material in nature cannot be straight way brushed aside, rather the contradictions and material omissions discloses from her evidence makes her evidence to be contradictory and untrustworthy in nature. Although, the ejahar is not a substantive piece of evidence, but it is settled proposition of law that it may be used for corroboration and the informant herself failed corroborate with the versions of ejahar, rather her evidence appears to be contradictory, that makes her evidence contradictory and doubtful in nature.
30. The witnesses further contradicted each other versions regarding the actual demand allegedly put forwarded by the accused person named Md. Aatur Rahman and in presence of those contradictions the facts of inflicting any physical torture upon the victim Must. Sabina Khatoon demanding any money not appears to be trustworthy in nature, as the process of inflicting physical torture is invariably connected with the demanding of money. Hence, evidences cannot be believed partly.
31. Now, coming to the causing physical assault we have already discussed earlier that all the witnesses not appears to be coherent, corroborative and supportive with each other's versions. Further, the witnesses appear to be contradictory

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about the actual injuries sustained by the victim Must. Sabina Khatoon. In presence of such contradictions coupled with the material omissions disclosed from their previous statement this court finds the witnesses to be doubtful in nature.

32. To sum up the evidences of record, it unveiled before this court that evidences presented by the prosecution witnesses appears to be not corroborative, coherent, supportive and trustworthy in nature. In this case the prosecution side failed to adduce any probable evidence to substantiate the material allegation against the accused person and the court not finds anything incriminating from the evidences on record upon which the accused may held guilty of commission of alleged offences.
33. Now coming to the settled provisions of law as well judgment of several Hon'ble High Court it seen that a single judge of this Court in **Jiwan Lal V/s State of Himachal Pradesh, reported in Latest HLJ 2012 (HP) Vol. 1. 231** has held that ---

"The elements of cruelty so far as clause (a) is concerned can be classified as follows:-(i) any 'wilful' misconduct which is of such a nature as is likely to drive the woman to commit suicide; or (ii) any 'wilful' conduct which is likely to cause grave injury to the woman; or (iii) any 'wilful' act which is likely to cause danger to life, limb or health, whether physical or mental of the woman.

34. In order to constitute "cruelty" under clause (a), there has to be a harassment of the woman with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or a case is to be made out to the effect that there is a failure by her or any person related to her to meet such demand.
35. As the facts from which cruelty is to be inferred are to be alleged and proved. It is not sufficient to merely say that victim Must. Sabina Khatoon was subjected to torture or cruelty. PW-4 being the medical officer who examined the victim has submitted his medical report in this case and the report not unveiled any short of injuries from the body of the victim as she claimed in her evidence-in-

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chief as well as in her ejahar. Hence, it seen that informant appears to be contradictory with her own version regarding causing injuries on her head and back by the accused person. Even the verbal testimony of the victim is not at all clear what was the injury inflicted upon the victim. The specific acts of omission or commission by the alleged offender has to be specifically proved. In absence of proof of such acts of omission or commission, the Court is not in a position to decide whether the conduct of accused amount to cruelty within the meaning of Section 498(A) of IPC.

36. In **Shobha Rani v. Medhukar Reddi**—the Supreme Court remarked that---

“under Section 498A of IPC a new dimension has been given to the concept of cruelty. Explanation to Section 498 A of IPC provides that any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide or likely to cause grave injury or danger to life, limb or health (whether mental or physical of the woman), and harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security would constitute cruelty. In this case it was held that evidence as to harassment to the wife to meet any unlawful demand for money is necessary to constitute cruelty in criminal law. This is the requirement of the offence of cruelty defined under Section 498(A) of IPC”.

37. In **Smt. Raj Rani v. State (Delhi Administration; AIR 2000 SC 3559)**

the apex Court held that-----

“while considering the case of cruelty in the context to the provisions of Section 498-A IPC, the court must examine that allegations/accusations must be of a very grave nature and should be proved beyond reasonable doubt.”

38. Further, in another case **Girdhar Shankar Tawade v. State of Maharashtra, AIR 2002 SC 2078**, the Supreme Court held that---

"cruelty" has to be understood having a specific statutory meaning provided in Section 498-A I.P.C. and there should be a case of continuous state of affairs of torture by one to another.

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39. Taking note of the above judgments amongst others Supreme Court in **Manju Ram Kalita v. State of Assam 2009 (2) S.L.J. (S.C.)** 1036 observed that---

"cruelty" for the purpose of Section 498-A Indian Penal Code is to be established in the context of S. 498-A IPC as it may be different from other statutory provisions. It is 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 cannot be termed as 'cruelty' to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as "cruelty".

40. After bestowing my thoughtful consideration to the pleadings as well as evidence available on record, I have no hesitation to conclude that there is/was no evidence adduced on record by the prosecution specifically proving cruelty in terms of clause "a" of Section 498(A) IPC. Moreover, the prosecution side failed to prove what sorts of overt acts that can be attributed by the accused person of this case to victim Must. Sabina Khatoon, which may force the victim to commit suicide. Furthermore, the state of affairs as narrated by victim not specifically pleaded by her in her ejahar. The sole testimony of the victim does not inspire any confidence in the mind of court upon which the accused may held guilty of commission of alleged offence.

41. In the light of settled propositions of law as decided in various cases of Hon'ble Apex Court, this court finds that the continuous state of affairs of torture that comes under clause "a" of Section-498(A) of IPC may term cruelty but such state of affairs happening since from the year 2011 must be continuous and proved by un-impeachable evidence. In this case from the forgoing discussion what we have observed that the evidence of informant-cum-victim (PW-1) not only appears to be contradictory but in the same time it fails to draw confidence of its truthfulness. The evidence of PW-1 found to be full with lot of

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shortcomings and failed to prove the essential ingredients of offence punishable under section-498(A) of IPC.

42. Therefore in the light of all the above said discussions and evidences on record, this court finds that prosecution side failed to adduce any cogent, clear, direct and trustworthy evidences to prove any of the circumstances explained in clause (a) & clause (b) of Section-498A of I.P.C.
43. Hence, it can be safely concluded here that prosecution side failed bring home the charge under section-498(A) of I.P.C against the accused persons beyond any shadow of doubt. As such the accused persons are acquitted from the charge under section-498(A) of I.P.C and sets at liberty. Bail bonds are extended for six months in view of section-437A of Cr.P.C.
44. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 06<sup>th</sup> day of January, 2022 at Tezpur.

**(Sri N. J. Haque)  
Chief Judicial Magistrate,  
Sonitpur: Tezpur**

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**ANNEXURE**

**1. Witnesses for Prosecution:-**

PW-1:- Must. Sabina Khatoon, Informant

PW-2:- Md. Ismail Ali,

PW-3:- Must. Masuda Khatoon,

PW-4:- Dr. Zulfikar Ahmed, M.O.

PW-5:- ASI Naren Boro, I.O.

**2. Witnesses for Defence: NIL**

**3. Court Witnesses: NIL**

**4. Prosecution Exhibits:-**

Ext-1                   :- FIR

Ext-1(1)               :- Signature of PW-1

Ext-2                   :- Medical Report

Ext-2(1)               :- Signature of PW-4

Ext-3                   :- Sketch Map

Ext-3(1)               :- Signature of PW-5

Ext-4                   :- Charge-Sheet

Ext-4(1)               :- Signature of Labanya Bezbaruah

**5. Defence Exhibits:- NIL**

**6. Material Exhibits: NIL**

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