

**P.R Case No-758 of 2020
(State of Assam Vs Sri Rajib Sen)**

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

P. R. Case No-758 of 2020

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

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

State of Assam

–Vs–

Sri Rajib Sen

S/O:- Late Bidhu Bhusan Sen

R/O:- Bhoirab Nagar Tilla

P/S:- Tezpur

Dist:-Sonitpur, AssamAccused Person

Advocate appeared:

Mrs. Karabi Das, Asst. P.P..... For the State

Mr. B. Tamuli & Ors, Ld. Advocates..... For the accused person

Evidence recorded on :- 10.01.2022

Date of Statement of defence :- 10.01.2022

Argument heard on :- 10.01.2022

Judgment delivered on :- 10.01.2022

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 Smt. Tushi Deb Sen, lodged an ejarah before the O/C of Tezpur P.S through In-charge of Mahabhoirab Police Outpost on 10.03.2020 alleging inter alia that she got married with the accused around three years back (From the date of filing the FIR) as per Hindu rites and rituals and at the time of marriage her father had gifted her some household articles. It is also stated that just after few days of her marriage, the accused asked her to bring money from the parental house. It is stated that the accused also tortured her both mentally and physically. It is also stated that on

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seeing the situation, her father gave some money to the accused. It is further stated that after birth of a female child, the accused again started harassing her both mentally and physically by demanding money and asked her to bring the same from her parental house and when she failed to bring the same, the accused tortured her both mentally and physically.

"INVESTIGATION"

2. On receipt of the ejahar, Tezpur P.S Case No-473 of 2020, under section-498(A) of I.P.C was registered and investigation into. On completion of the investigation, the I.O. of this case submitted charge sheet u/s-498(A) of I.P.C against the above-named accused person.

CHARGE & TRIAL

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 CrPC was furnished to the above named accused person. After hearing both side, charge of offence u/s-498(A) of I.P.C. was read over and explained to the accused person on which he pleaded not guilty and claimed to be tried.

STATEMENT OF DEFENCE

4. The prosecution side to prove the guilty of the accused person examined the informant-cum-victim of this case. Considering the testimony of the informant-cum-victim, 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 Cr.P.C and his pleas of denial were 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 backdrop of evidences presented before this court by prosecution side.

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

- (i) Whether the accused person on or before 10.03.2020 at a place called Bhoirab Nagar Tila under Tezpur PS being

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the husband of the informant named Smt. Tusi Deb Sen subjected her to mental and physical torture and subsequently, the accused mercilessly beaten her by way of giving fist blows and thereby committed an offence under section-498(A) of I.P.C?

DECISION AND THE REASONS THEREON:

7. The essence of the offence under Section-498A of Penal Code, 1860, lies in the Explanation to section-498A, 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;

8. 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).

9. 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

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demands of dowry, irrespective of the fact whether such unlawful demand is accompanied by any physical torture.

10. Thus, it would be seen that if the prosecution seeks to prove a charge for the offence u/s-498A 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).

11. 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.

12. In this case the prosecution has the burden to demonstrate that the accused person imperilled bodily and psychological torture upon the informant named Smt. Tusi Deb Sen with intend to accomplish his stresses on different dates during her conjugal life with the accused.

13. Prosecution side to prove the case examined the informant-cum-victim in this case. I have carefully travelled through the testimony of the informant-cum-victim in the backdrop of entire prosecution case and it finds:-

14. PW-1, Smt. Tusi Deb Sen, who in her testimony deposed that the accused is her husband. She also deposed that in the year 2020, she had a quarrelled with the accused over some domestic issues and out of misunderstanding, she lodged the ejahar against the accused person. She identified her ejahar as Ext-1 wherein she put her signature as Extr-1(1). She also deposed that she does not want to proceed further against the accused as she is living her conjugal life with accused person happily. Her cross-examination was declined by defence side.

15. Hence, it apparently appears before this court that PW-1 being the informant-cum-victim lodged this case against the accused person due to misunderstanding as there was domestic quarrel took place between her and the accused person and subsequently the matter was amicably settled between them. PW-1 categorically deposed that presently she is living peacefully with the accused at her matrimonial house. PW-1 admitted that she does not want to proceed with the case against the accused person as she is living peacefully with the accused.

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16. To sum up the testimony of the informant-cum-victim, it reveals before this court that the informant-cum-victim herself appears to be contradictory with the entire contentions of the ejahar and her testimony cannot be relied upon.

17. Hence, considering the above said discussions as well as evidences on record, it can be conclusively decided here that the prosecution side failed to establish any one of the circumstances discussed in explanation (a) or (b) of 498(A) IPC.

18. In view of the above, evidence on record, I am of the opinion that prosecution has failed to prove the charge against the accused person beyond reasonable doubt and as such the accused person is acquitted from the charges u/s-498(A) of IPC and sets at liberty. Surety is extended for six months in view of section 437A of Cr PC.

19. Accordingly, the case is disposed of Judgment is prepared and pronounced in open court. Given under my hand and seal of this court on this 10th day of January, 2022.

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

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ANNEXURE

1. Witnesses for Prosecution:-

PW-1:- Smt. Tusi Deb Sen, Informant

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits:

Ext-1 :- FIR

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

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

Chief Judicial Magistrate
Sonitpur, Tezpur