

P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)

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

G. R. Case No-997 of 2018

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

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

State of Assam

–Vs–

Sri Kushi Biswas

S/O:- Sri Nitya Biswas

R/O- Balijaan Bangali Gaon

P/S:- Dhekiajuli

Dist:- Sonitpur, Assam

Accused Person.....

Advocate appeared:

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

Mr. B. B. Biswas & Anr, Ld. Advocates.....For the accused person

Evidence recorded on :- 17.12.2019, 27.01.2020, 09.11.2021,
& 04.12.2021
Date of Statement of defence :- 08.12.2021
Argument heard on :- 04.01.2022
Judgment delivered on :- 07.01.2022

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. Ranju Sarkar, lodged an ejarah before the O/C of Dhekiajuli PS alleging inter alia that she got married with accused around ten years back and after their marriage, the accused tortured her both mentally and physically by demanding dowry. It is also stated that after four months of marriage, while she was pregnant, the accused tried to kill her by way of pressing her neck inside the room after playing loud song in Home Theatre and also pushed hard on the wooden bed

**P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)**

by holding her head and due to that she sustained head injury. It is further stated that as she was pregnant the accused person told her to bring money from her parental house and further physically assaulted her. It is also stated that on 01.01.2018 at about 10:30 PM, accused kept her at her father's house and also started beating her there too. It is further stated that till then the accused never enquired about her and further threatened her father over phone that if her father bring her back to his house, the accused will cut her along with her father.

"INVESTIGATION"

2. On receipt of the ejahar, the O/C of Dhekiajuli PS registered a case vide Dhekiajuli PS Case No-139 of 2018 under section-498(A)/307/34 of IPC and investigation into. On completion of the investigation, the Investigating Officer of this case 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 six numbers of witnesses including the informant-cum-victim and the investigating officer 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.

**P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)**

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

Whether on or before 01.02.2018, the accused being the husband of the informant named Smt. Ranju Sarkar subjected her to cruelty by torturing her physically and mentally 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 six numbers of witnesses including the informant-cum-victim and for the sake of proper appreciation of evidences on record let us reproduce the evidences on record.
8. PW-1, Smt. Ranju Sarkar being the informant-cum-victim of this case deposed that the accused of this case is her husband. She further deposed that she got married with the accused in the month of April, 2017 and after three months of their marriage, the accused along with his parents demanded many things from her like money, wooden furniture etc. She also deposed that as she could not fulfil the demands of accused, the accused inflicted physical injury to her and hit her head banging it against the wooden bed to which she received severe injury on her head. She further deposed that on 01.02.2018 the accused took her to her parental house and refused to take her back. She also deposed that the accused told her that if she goes back to her matrimonial house, he would chop her body as well as that of her father and out of fear she did not go back to her husband's house. Thereafter, out of fear she filed the instant case. She further deposed that on 01.02.2018 at 10:30 PM, her husband left her at her paternal house. She deposed that she herself medically examined after going to her maternal house and at that time she was pregnant. She further deposed that police interrogated her. She identified her ejahar as Ext-1 wherein she put her signature as Ext-1(1).

P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)

9. PW-1 in her cross-examination testified that her husband used to demand to bring an amount of Rs.1,50,000/- from her father as well as wooden furniture. She also deposed that after 12 days of physically torturing her i.e. 01.02.2018 her husband took her to her maternal house and left her there. She deposed that the distance from her maternal house to her paternal is approximately 20 KMs away. She deposed that her parents pursuant to her marriage on and off enquire about her well being over telephone and also visit her sometime. She also deposed that she lodged the FIR, after how many days of physical assault by her husband, she does not know. She also deposed that at the time of incident her parents were not aware of the physical torture inflicted upon her by her husband. However, they know as she has told them. She also deposed that she along with her father, Haladhar Mandal and her elder brother Prasanta Sarkar had gone to lodge the FIR. She further deposed that the FIR was written by whom she did not know. She further deposed that after filing the FIR in the case, she went back to her husband's house as her husband came to take her and there she stayed for around 15-16 days. She also deposed that later, her husband owing to her ill health which she sustained due to physical injury caused by her husband and her husband took her to Tezpur Medical College and later to GMCH. She further deposed that she does not remember for how long she stayed at her husband's place after being physically injured by being hit on wooden bed. She also deposed that at her matrimonial house, there is her husband, brother-in-law, sister-in-law and her in-laws and they all resided in the same compound and also there were four five houses near her husband's house. She also deposed that she has never informed the neighbours of her husband's place that her husband used to inflict physical injury on her. She denied the fact that her husband had not demanded dowry from her. She further denied the fact that her husband had not inflicted physical and mental torture upon her. She admitted the fact that the reports given by doctor to her when she personally went for treatment has not been furnished.

P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)

10. PW-2, Sri Suhash Sarkar being the father of informant deposed before the court that the informant is his daughter and the accused is his son-in-law. He also deposed that his daughter lodged the ejahar on 14.02.2018 and she got married with the accused person before 5-6 years of lodging the ejahar as per Hindu rites and rituals. He further deposed that after marriage the accused person many times tortured his daughter both mentally and physically and also tortured her during the time of pregnancy of his daughter. He also deposed that one day the accused along with his daughter went to his house while his daughter was five months pregnancy and on the said day i.e. on Saturday his daughter refused to go to her matrimonial house saying that she will go to the accused's house on Monday. But the accused on the way told his daughter that if she goes to his house on Monday, he would cut her as well as cut him. He further deposed that the accused also scolded him over phone using filthy languages that if his daughter did not get money from him then he would kill his daughter. He further deposed that the accused regularly scolding her using filthy languages in demands of dowry.
11. PW-2 in his cross-examination testified that ejahar was lodged on 14.02.2018. He admitted that he had not seen any physical assault done by the accused upon the victim. He also deposed that nobody was present including him when the accused told him that if his daughter goes to the house of accused person on Monday, he would cut her as well as cut him. He further deposed that his daughter went to his house at the time of her five months pregnancy and after delivery one day accused took his daughter along with him and she stayed at her matrimonial house for about one to one and half months. He also deposed that during that period his son-in-law took his daughter to Guwahati for her treatment. He deposed that he did not know whether his daughter suffered pressure stroke or not while she was at her matrimonial house. He admitted that he had not stated before the police that his son-in-law informed him that if he did not bring demanded money for him then he would cut or kill him.

**P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)**

12. PW-3, Sri Haldhar Mandal deposed that he knows the informant and the accused of this case. He also deposed that they have heard that the accused pursuant to his marriage to the informant, the accused physically assaulted the informant and demanded dowry from her. He further deposed that on 14.02.2018 the informant lodged the FIR. He does not know anything else. Police interrogated him.
13. PW-3 in his cross-examination testified that he has no personal knowledge of what happened between the informant and the accused. He further deposed that he does not remember when and on which dates the informant was assaulted by the accused. He also deposed that after institution of this case the accused took her back to her matrimonial house and it has come to his knowledge that the accused took the informant to Guwahati for treatment.
14. PW-4, Sri Prasanta Sarkar being the brother of the informant deposed that in the year 2018 his sister got married with the accused and thereafter, the accused person started physical torture upon his sister demanding dowry and consequently due to non fulfilment of demand, his sister took shelter at their house three years back. He further deposed that since from last three years his sister is staying with them and the accused never came to look after his sister. He also deposed that the accused physically assaulted his sister in her backside for which she fell down on a bug and sustained injuries. He deposed that his sister became paralyzed due to physical torture of the accused. He also deposed that his sister took treatment from Tumuki Medical College and lodged the ejarah of this case. He further deposed that his sister gave birth of a female child and said child died after six days of her born.
15. PW-4 in his cross-examination testified that his sister again lodged a case after filing the instant case against the accused and said case is still pending before the court. He admitted that he has not seen the incident. He further deposed that he heard about the incident from his sister. He also deposed that after his sister become paralyzed accused took his sister to Guwahati for her treatment. He admitted the fact that he had not stated before the police that accused

**P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)**

physically assaulted his sister in her back side for which she fell down on a bug and sustained injuries. He also admitted the fact that he had not stated before the police that his sister become paralyzed due to physical torture of the accused. He admitted the fact that he had not stated before the police that due to non fulfilment of demand of accused his sister took shelter at their house.

16. PW-5, Sri Chandan Saha deposed before the court that he knows the accused of this case and the informant is his sister-in-law. He also deposed that three years back informant got married with the accused and she led her conjugal life with the accused for about 08 months. He further deposed that after 08 months of her marriage she become pregnant and the accused started physical torture upon her body and due to physical torture of accused the informant received waist broken injury and she was admitted to TMCH, Tezpur. He also deposed that the informant become paralyzed due to the injury sustained on her waist. Now, she is suffering from paralyzed and staying at her paternal house.
17. PW-5 in his cross-examination testified that he had not witnessed any incident. He also deposed that accused took the informant to Guwahati for her treatment while she was suffering from paralyze. He admitted the fact that he had not stated before the police that due to physical torture of accused the informant received waist broken injury and she was admitted to TMCH, Tezpur. He also admitted the fact that he had not stated before the police that the informant became paralyzed due to the injury sustained on her waist.
18. PW-6, ASI Budhan Borah being the Investigating Officer of this case deposed before this court that on 14.02.2018 he was posted at Singri Police OP under Dhekiajuli PS and during that time O/C of Dhekiajuli PS named M. M. Patowary received an ejahar from one Smt. Ranju Sarkar and registered the same as Dhekiajuli PS Case No-139 of 2018 u/s-498(A)/307/34 of IPC. Thereafter, the O/C of Dhekiajuli PS endorsed him to investigate the case and accordingly, he started his investigation, visiting the place of occurrence, preparing rough sketch map and recording the statement of the witnesses including the complainant. He identified the sketch map as Ext-2 wherein he put his

**P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)**

signature as Ext-2(1). He further deposed that the complainant was sent for medical examination and consequently he has collected the injury report. He also deposed that he had apprehended the accused named Khushi Biswas and forwarded him to the Hon'ble Court and after conclusion of his investigation, he submitted charge sheet u/s-498(A) of IPC. He also identified the charge sheet as Ext-3 wherein he put his signature as Ext-3(1).

19. PW-6 in his cross-examination testified that he did not find any neighbor of the accused for which their statement could not be recorded. He denied the fact that he did not record the statement of witnesses at the place of occurrence. He admitted the fact that informant named Ranju Sarkar did not state before him that accused had demanded Rs.1,50,000/- from her. He also admitted the fact that informant named Ranju Sarkar did not state before him that accused pressed her neck at the time of leaving her at her parent's house. He also admitted that PW-2 Suhaj Sarkar did not state before him that accused told him over phone that if his daughter did not bring the dowry amount he will kill her.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

20. 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.

**P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)**

- 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

21. 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).
22. 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.
23. 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 ejahar allegedly comes under the purview of clause (b) of Section-498(A) of IPC.
24. 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. LJ 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 grave, can never take the place of proof.
25. 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

P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)

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.

26. 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 out for which PW-1 is the informant-cum-victim of this case, PW-2, PW-4 & PW-5 are the relatives of the informant, PW-3 is the neighbour of victim and PW-6 is the investigating officer of this case.
27. 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 ten years back and after their marriage, the accused tortured her both mentally and physically by demanding dowry. She also stated that after four months of her marriage, while she was pregnant, the accused tried to kill her by way of pressing her neck inside the room after playing loud song in Home Theatre and also pushed hard on the wooden bed by holding her head and due to that she sustained head injury. She further stated that as she was pregnant the accused person told her to bring money from her parental house and further physically assaulted her. She also stated that on 01.01.2018 at about 10:30 PM, accused kept her at her father's house and there also started beating her. She further stated that till then the accused never enquired about her and further threatened her father over phone that if her father bring her back to his house, the accused will cut her along with her father. Hence, the prime accusations appear to be abusing the informant-cum-victim and her parents coupled with physical assault in demand of dowry and threatening her and her father to kill by the accused person over phone. The ejahar has been lodged by informant herself and she also pleaded some other facts regarding

P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)

her physical tortured by the accused in demands of dowry. There is no specific date in demands of dowry as stated by the informant in her ejahar. She simply pleaded that the accused has demanded dowry from her while she was pregnant.

28. 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.
29. PW-1, Smt. Ranju Sarkar being the informant-cum-victim of this case deposed that she got married with the accused in the month of April, 2017 and after three months of their marriage, the accused along with his parents demanded many things from her like money, wooden furniture etc. She also deposed that as she could not fulfil the demands of accused, the accused inflicted physical injury to her and hit her head banging it against the wooden bed to which she received severe injury on her head. The fact of demanding many things from her like wooden furniture, money, etc. and as she could not fulfil the demands of the accused, the accused inflicted physical injury to her and hit her head banging it against the wooden bed to which she received severe injury on her head 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 after four months of marriage, while she was pregnant, the accused tried to kill her by way of pressing her neck inside the room after playing loud song in Home Theatre and also pushed hard on the wooden bed by holding her head and due to that she sustained head injury. Even though, the medical officer was not examined but one medical report of Dhekiajuli CHC has been enclosed with the case record and it is seen that no external injuries found. In a case where a victim supposedly physically assaulted by way of

P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)

inflicting physical injury to her and hit her head banging it against the wooden bed to which she received severe injury on her head, 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 Dhekiajuli CHC. That part of her evidence makes the entire contentions of the ejahar contradictory and doubtful in nature. She further claimed in her evidence-in-chief that on 01.02.2018 accused took her to her parental house and refused to take her back and if she goes back to her matrimonial house, he would chop her body as well as of her father and out of fear she did not go back to her husband's house. If really the incident as claimed by the informant took place she must have lodged ejahar immediately after the incident before the police station. Furthermore, PW-1 appears to be contradictory with her own contentions by way of testifying in her ejahar that on 01.01.2018 at about 10:30 PM, accused kept her at her father's house and also started beating her there too and those contradictions are in respect of material fact which cannot be brushed aside. PW-1 in her cross-examination also claimed that her husband used to demand to bring an amount of Rs.1,50,000/- from her father as well as wooden furniture and the fact of demanding money of Rs.1,50,000/- from her had not been pleaded by the informant in her ejahar.

30. PW-1 also claimed in her cross-examination that her husband owing to her ill health which she sustained due to physical injury caused by her husband and her husband took her to Tezpur Medical College and later to GMCH. However, on perusal of the entire case record no any medical report issued by Tezpur Medical College and also by GMCH found enclosed with the case record to reflect the injuries sustained by the informant. We have already discussed that one medical report issued by Dhekiajuli CHC found enclosed with the case record which shows no any external injury found upon the body of informant-cum-victim (PW-1).
31. The ejahar has been lodged by the informant-cum-victim herself and she also pleaded some other facts regarding after four months of her marriage, while

**P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)**

she was pregnant the accused tried to kill her by way of pressing her neck inside the room after playing loud song in Home Theatre and as she was pregnant the accused told her to bring money from her parental house and the informant being the sole eye witness to those facts must have mentioned 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. 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. She has also not supported and corroborated the fact of threatening her father by the accused over phone in her evidence-in-chief as she claimed in her ejahar. 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.

32. 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.
33. Now, coming to the evidence presented by PW-2, Sri Suhash Sarkar, who is the father of the informant deposed before the court that his daughter got married with the accused person before 5-6 years of lodging the ejahar as per Hindu rites and rituals and after marriage the accused person many times tortured his daughter both mentally and physically and also tortured her during the time of

P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)

pregnancy of his daughter. PW-2 being the father of the informant supported and corroborated one fact regarding the physical and mental tortures upon the informant-cum-victim in his evidence. He further deposed that one day the accused along with his daughter went to his house while his daughter was five months pregnant and on the said day i.e. on Saturday his daughter refused to go to her matrimonial house saying that she will go to the accused's house on Monday. But the accused on the way told his daughter that if she goes to his house on Monday, he would cut her as well as cut him. Astonishingly, he in his cross-examination categorically admitted that he did not state before the police that his son-in-law informed him that if he did not bring demanded money for him then he would cut or kill him. If really, accused did so as stated by him, then, he should have stated such facts before the I.O and he himself in his cross-examination admitted that he has not state such facts before the I.O and that makes his evidence contradictory. As such it is seen that except the fact of demanding money from his daughter, he failed to depose and support anything against the accused person of this case as PW-1 contended in her ejahar. He also failed to depose the specific date of incident as stated by him in his evidence. PW-2 also failed clarifies the exact amount demanded from his daughter by the accused person in his evidence. He also failed to depose what sorts of physical torture was actually inflicted upon his daughter (PW-1) by the accused.

34. PW-2 further introduced some new facts to the case of prosecution by way of testifying that the accused also scolded him over phone using filthy languages that if his daughter did not get money from him then he would kill his daughter. He also deposed that the accused regularly scolding her using filthy languages in demands of dowry. The evidence presented by PW-2 makes it categorical that he had failed to utter any single word to support the prime accusations of scolding him over phone using filthy languages and in the same time the informant had not uttered any single words as to what filthy languages used against her father by the accused person. He also affirmed in his cross-

P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)

examination that he had not seen any physical assault done by the accused upon the victim. He also affirmed that he did not know whether his daughter suffered pressure stroke or not while she was at her matrimonial house.

35. PW-4, Sri Prasanta Sarkar being the brother of informant-cum-victim deposed that in the year 2018 his sister got married with the accused and thereafter, the accused person started physical torture upon his sister demanding dowry and consequently due to non fulfilment of demand, his sister took shelter at their house three years back. He also deposed that the accused physically assaulted his sister in her backside for which she fell down on a bug and sustained injuries. He deposed that his sister became paralyzed due to physical torture of the accused. He deposed that his sister took treatment from Tumuki Medical College. As such it is seen that except the fact of demanding money, he failed to depose and support anything against the accused of this case as PW-1 contended in her ejarah. He also failed to depose the specific date of incident as stated by him in his evidence. PW-4 also failed to clarify the exact amount as demanded from PW-1 by the accused person in his evidence. If really the incident of assault as claimed by PW-4 took place then they have definitely furnished the medical report of the victim immediately after the treatment. However, on careful perusal of the entire case record, no any medical report of Tumuki Medical College and Hospital has been furnished by the PW-1, PW-2 & PW-4 to reflect the injury of the victim (PW-1). We have already discussed earlier that one medical report found enclosed with the case record issued by Dhekiajuli CHC which shows no any external injury found upon the body of PW-1.

36. In this case, PW-4 also claimed that accused physically assaulted his sister in her backside for which she fell down on a bug and sustained injuries and further his sister became paralyzed due to physical torture of the accused. Astonishingly, he in his cross-examination categorically admitted that he did not state before the police that the accused physically assaulted his sister in her back side for which she fell down on a bug and sustained injuries and further

P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)

his sister become paralyzed due to physical torture of the accused. Although, PW-4 in his evidence-in-chief claimed that due to non fulfilment of demand, his sister took shelter at their house but in the same time he affirmed that he had not stated such fact before the I.O. If really, accused did so with his sister, then, he should have stated such facts before the I.O and he himself in his cross-examination admitted that he has not state such facts before the I.O and that makes his evidence contradictory in nature. He also affirmed in his cross-examination that he has not seen the incident, he only heard about the incident from his sister. The evidence presented by PW-4 not only makes the version of the informant (PW-1) doubtful but also creates a reasonable contradiction, which cannot be thrown away.

37. Now, coming to the evidence presented by PW-5, Sri Chandan Saha deposed before the court that after 08 months of the marriage of his sister-in-law (PW-1) she become pregnant and the accused started physical torture upon her body and due to physical torture of accused, the informant received waist broken injury and she was admitted to TMCH, Tezpur. He also deposed that the informant become paralyzed due to the injury sustained on her waist. Astonishingly, he in his cross-examination categorically admitted that he did not state before the police that due to physical torture of accused the informant received waist broken injury and she was admitted to TMCH, Tezpur. He also admitted the fact that he had not stated before the police that the informant became paralyzed due to the injury sustained on her waist. Astonishingly, he in his cross-examination categorically admitted that he did not state before the police that due to physical torture of accused the informant received waist broken injury and she was admitted to TMCH, Tezpur and further the informant became paralyzed due to the injury sustained on her waist. If really, accused physically upon the informant for which the informant sustained waist broken injury and due to said injury sustained by the informant, the informant become paralyzed, then, he should have stated such facts before the I.O and he himself in his cross-examination admitted that he has not state such facts before the

P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)

I.O and that makes his evidence contradictory. The evidence presented by PW-5 not only makes the version of the informant (PW-1) doubtful but also creates a reasonable contradiction, which cannot be thrown away.

38. 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.
39. The neighbor of the informant examined in this case as PW-3 and he deposed that he knows the informant and the accused of this case. He also deposed that they have heard that the accused pursuant to his marriage to the informant, the accused physically assaulted the informant and demanded dowry from her. Although, he claimed that the accused after marriage physically assaulted the informant in demands of dowry but he has failed to depose the exact date and time of the alleged incident as he admitted in his cross-examination that he does not remember when and on which dates the informant was assaulted by the accused. The evidence of PW-3 appears to be hearsay in nature as he heard about the incident. He also failed to clarify the exact amount demanded from the informant by the accused person in his evidence. 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. The investigating officer was examined as PW-6, who

**P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)**

has exhibited the sketch map as Ext-2 and charge sheet as Ext-3. The investigating officer i.e. PW-6 during his cross-examination affirmed that PW-1 Smt. Ranju Sarkar has not stated before him that "accused had demanded Rs.1,50,000/- from her". He also affirmed PW-1 did not state before him that "accused pressed her neck at the time of leaving her at her parent's house". PW-6 also affirmed that PW-2 Sri Suhaj Sarkar did not state before him that "accused told him over phone that if his daughter did not bring the dowry amount he will kill her." All the facts which have not stated before the I/O are appears to be relevant fact designating material omissions on the part of both witnesses and those omissions makes the evidences of each witnesses to be contradictory with their previous versions.

40. The witnesses further contradicted each other versions regarding the actual demand allegedly put forwarded by the accused person named Sri Kushi Biswas and in presence of those contradictions the facts of inflicting any physical torture upon the victim Smt. Ranju Sarkar 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.
41. 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 about the actual injuries sustained by the victim Smt. Ranju Sarkar. 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.
42. To sum up the evidences of record, it unveiled before this court that evidences of PW-1, PW-2, PW-4 and PW-5 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

**P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)**

evidences on record upon which the accused may held guilty of commission of alleged offences.

43. 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.

44. 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.
45. 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 Smt. Ranju Sarkar was subjected to torture or cruelty. Even, if the medical officer who examined the victim not examined in this case. But one medical report found enclosed with the case record and the report not unveiled any short of injuries from the body of the victim as she claimed in her evidence-in-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.

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

**P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)**

“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”.

47. 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.”

48. 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.

49. 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

P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)

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".

50. 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 Smt. Ranju Sarkar, 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.
51. 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 shortcomings and failed to prove the essential ingredients of offence punishable under section-498(A) of IPC.
52. 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.
53. 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

**P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)**

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.

54. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 07th day of January, 2022 at Tezpur.

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

**P.R Case No-997 of 2018
(State of Assam Vs Sri Kushi Biswas)**

ANNEXURE

1. Witnesses for Prosecution:-

PW-1:- Smt. Ranju Sarkar, Informant

PW-2:- Sri Suhash Sarkar,

PW-3:- Sri Haldhar Mandal,

PW-4:- Sri Prasanta Sarkar,

PW-5:- Sri Chandan Saha,

PW-6:- ASI Budhan Borah, 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 :- Sketch Map

Ext-2(1) :- Signature of PW-6

Ext-3 :- Charge-Sheet

Ext-3(1) :- Signature of PW-6

5. Defence Exhibits:-

6. Material Exhibits: NIL

Chief Judicial Magistrate
Sonitpur, Tezpur