

APPENDIX-12

<p><u>IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR</u></p> <p><u>TEZPUR</u></p> <p>Present:- Sri Nabajit Bhatta. AJS. MA, LL.B. Chief Judicial Magistrate, Sonitpur, Tezpur</p> <p>[Date of the Judgment] 30.11.2022</p> <p>[PR Case No-925 of 2019]</p> <p>(FIR NO-1391/2018 DATED-03.07.2018/CRUELTY AGAINST WOMAN CASE AND TEZPUR POLICE STATION)</p>	
COMPLAINANT :	STATE OF ASSAM OR Sri Gopal Mandal, S/O:- Late Jiban Kanai Mandal, R/O:- Polo Field, Tezpur, P/S:- Tezpur, Dist:- Sonitpur, Assam
REPRESENTED BY	Mr. Nalini Kanta Mishra, Ld. Addl. P.P Smt. Karabi Das, Asst. P.P.
ACCUSED PERSON	Md. Rafikul Islam, S/O:- Late Soiyad Ali, R/O:- Nepalipatty, P/S:- Tezpur, Dist:- Sonitpur, Assam
REPRESENTED BY	Mr. Abdul Aziz, Ld. Senior Counsel

APPENDIX-13

Date of Offence	After Marriage of the daughter of Complainant and on 29.06.2018
Date of FIR	02.07.2018
Date of Charge Sheet	31.08.2018
Date of Framing of Charge	29.11.2021
Date of commencement of evidence	30.11.2021
Date on which judgment is reserved	10.11.2022 & 21.11.2022
Date of Judgment	30.11.2022
Date of the Sentencing Order, if any	NIL

ACCUSED DETAILS :

Rank of the Accused	Name of the accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentenced Imposed	Period of Detention undergone during Trial for purpose of Sec. 428 Cr.P.C.
A-1	Md. Rafiqul Islam	NIL	NIL	Sec-498(A) of IPC	Acquitted	NIL	NIL

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

P. R. Case No-925 of 2019

State of Assam
-Vs-
Md. Rafiqul Islam

.....Accused Person

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

Present:

Sri Nabajit Bhatta AJS. MA, LL.B.
Chief Judicial Magistrate, Sonitpur at Tezpur

30th day of November, 2022

Mrs. K. Das, Asst. P.P

..... Advocate for the State

Mr. A. Aziz, Ld. Counsel

..... Advocate for the Accused

Date of Hearing : 30.11.2021, 24.02.2022 & 28.10.2022

Date of Argument : 10.11.2022 & 21.11.2022

Date of Judgment : 30.11.2022

J U D G M E N T

1. Prosecution story in brief is as follows that on 02.07.2018 the informant Sri Gopal Mandal lodged an FIR before the O/C of Tezpur Police Station to the effect that his daughter got married with the accused Md. Rafiqul Islam around three and half years back (From the date of filing the ejahar) and out of the said wedlock one girl child was born to them after one year of their marriage. After that the above-named accused started torturing his daughter both mentally and physically. It is also stated that on 29.06.2018 at night the above-named accused person without any

reason physically assaulted his daughter and demanded money from her stating that she should bring the demanded money from her parental house and if she failed to give the said demanded money he would drive her out of her matrimonial house. It is also stated that in the very next day, the accused person called his wife over phone and told her that yesterday night there was a fight took place between the accused and her daughter and today itself i.e. on 02.07.2018 taking the advantage of his absent her daughter was going somewhere else. When the accused asked about his wife, his wife replied the accused person that she did not know where she going. Now, he suspected that the accused kept his daughter somewhere else. Hence, the prosecution case.

2. The instant case was registered under section-498(A)/346 of I.P.C. R/W Sec-4 of D. P. Act and the police investigated the same. After completion of the investigation police submitted the charge-sheet against the accused person, namely, Md. Rafiqul Islam under section-498(A) of I.P.C.
3. That my Ld. Predecessor in office took cognizance of the offence against the accused person. On appearance of the accused person copies of relevant documents were furnished to the accused person and the charge under section-498(A) of I.P.C. was framed against the accused and the said charge was read over and explained to the accused person by my Ld. Predecessor to which he pleaded not guilty and claimed to be tried.
4. Prosecution in order to prove the case has examined as many as five numbers of witness including, informant, victim and investigating officer of this case. Defence plea was total denial. Defence has adduced no evidence. Statement of the accused person has been recorded under section-313 of Cr. P.C.

5. **POINTS FOR DETERMINATION:-**

- (i.) Whether the accused person being the husband of the informant's daughter, namely, Smt. Gayetri Mandal had subjected her to mental as well as physical torture by demanding dowry on various occasions and also drove her out from her matrimonial house and thereby committed the offence of cruelty upon her punishable under section-498(A) of I.P.C.?
6. Heard argument from the Ld. Advocate of both the sides. On perusal of the evidence on record and case diary the very findings are as follows.

DISCUSSION, DECISION AND REASONS THEREOF

7. The prosecution opening the account of examining the witnesses first brought the informant, namely, Sri Gopal Mandal as PW-1. The PW-1 has stated in his evidence-in-chief that he lodged this case against the accused person, namely, Rafiqul Islam. He further stated that his daughter eloped with the accused Rafiqul Islam and got married in the year 2014. He also stated that his daughter had quarrelled with the accused on several times and went from the house of the accused person to some other places. He stated that in the year 2018, one day accused informed him over telephone that his daughter came out from the house having quarrel with him and as his daughter did not come to his house he lodged the ejahar against the accused person on suspicion that accused may kill his daughter. He also stated that he came to know from his daughter that the accused tortured her demanding money and sometime his daughter gave him money bringing out the same from her aunt. He further stated that his daughter herself went from the out of the accused person having quarrel with him. He identified his ejahar as Ext-1 wherein he put his signature as Ext-1(1).

8. In cross-examination, PW-1 has stated that he lodged an ejahar against the accused when his daughter eloped with the accused person and said case already disposed of. He stated that he never visited the house of accused after his daughter eloped with the accused. He also stated that his daughter never came to his house after she eloped with the accused. He further stated that he never seen any incident occurred between his daughter and the accused person. He stated that he does not know what happen between his daughter and the accused. He took his daughter to his house from police station. He stated that now, his daughter is living with them and she has a child. He further stated that after the incident sometimes his daughter on several occasions went from the house of accused and again went back to the house of accused. He also stated that accused Rafiqul visited his house in the year 2015 and told his daughter to come with him to his house. Accused also visited the house of his daughter's aunt named Anju Laskar and said Anju Laskar came to give her statement before the court. He further stated that he did not medically examine his daughter after torturing his daughter by accused person. He stated that he does not allow the accused to bring back his daughter and if his daughter wants to go with him then she will go with him.
9. PW-2, Smt. Gayetri Mandal being the victim of this case has stated in her evidence-in-chief that she knows the informant of this case, he is her father and the accused is her husband. She stated that she got married with the accused in the year 2014 at Barpeta in the house of one of the relatives of the accused. She further stated that she eloped with the accused and got married with him. She stated that she led conjugal life with the accused at Nepalipatty and she led her conjugal life with the accused person for about one year. She also stated that the accused

person physically assaulted her in the year 2015 by demanding money and asked her to bring the same from her parental house. She stated that after quarrel with the accused she sometimes visited her aunt's house situated at Polo Field, Tezpur. Thereafter, she wilfully went back to her husband's house. She also stated that the accused threatened her parents over phone if she does not go to the house of her husband. She stated that she gave Rs.10,000/- to the accused after bringing out the same from her aunt's house. Thereafter, again quarrel took place between them and she thereafter, went to her friend's house and from where she called her father. Later, her father lodged this case and since from then she is living with her parents.

10. PW-2 in her cross-examination has stated that after marriage she lived with accused around one year at Arunachal Pradesh and after coming from Arunachal she lived with him at his house situated at Gotlong. Thereafter, she lived with her husband at Nepali patty around 5 months in a rented house. She stated that on several occasion she went from the house of accused having quarrel with him. She also stated that she did not inform about her physical assault to any neighbouring people of their rented house situated at Nepali Patty. She further stated that she want to work at Guwahati and her husband did not permit her to go Guwahati for which quarrel took place between them. She further stated that her husband did not like to work at Guwahati. She also stated that she fled away from the house of the accused in his absence and she went to Guwahati after fleeing away from the house of accused in his absence and stayed at the house of her friend named Reema. She stated that she stayed there for about 20-22 days and from there she contacted with her father and who suggested her to go to police station and from there she went to her parent's house. She stated that her husband lodged a case

against her father alleging that her father managed to take her out of his house. She further stated that after 3 months of the birth of her child she went out of the house of the accused person. She also stated that she never came back to the house of accused. She never took treatment from doctor. She does not want to go with her husband if he takes her.

11. PW-3, Smt. Anju Laskar has stated in her evidence-in-chief that she knows the informant and the victim of this case. She also knows the accused person. She stated that the victim got married with the accused and after their marriage they started their conjugal life at a rented house of Nepali Patty and during their conjugal life a girl child was born to them. She stated that victim Gayetri Mandal (Niece) sometimes visited her house and informed her that her husband physically assaulted her due to domestic quarrel. She also stated that accused sometime asked the victim to bring money from her paternal house and as the victim did not have any visiting terms with her parents, she informed her about the demand of accused. She also stated that on many occasions she has paid money to victim and once she gave Rs.10,000/- to victim for paying the same to the accused. Now, she is living with her parents.
12. PW-3 in her cross-examination has stated that she never visited the house of the accused. She stated that Gayetri Mandal got married with the accused after being eloped with accused. She further stated that father of victim lodged many cases against the accused. She admitted that she never saw any incident. She also stated that she could not say exactly what happened between the victim named Gayetri Mandal and accused. She further stated that she never paid any money to accused. On many occasion accused visited her house to bring back the victim Gayetri Mandal.

13. PW-4, Smt. Beauty Mandal being the mother of victim has stated in her evidence-in-chief that she knows the informant of this case and he is her husband. She also knows the accused person. She stated that in the year 2014, accused eloped with her daughter Gayatri Mandal and got married. She further stated that they led conjugal life till the year 2018 and in the month of June 2018, the accused tortured her daughter physically and mentally and demanded money and due to that she fled away from the house of accused. She also stated that his daughter took shelter at her friend's house. She stated that after 10-15 days her daughter came to their house and informed them about the incident. Thereafter, her husband lodged ejahar against the accused.
14. PW-4 in her cross-examination has stated that her daughter led conjugal life with the accused person about 4 years. That the accused stayed with her daughter in different places. She never went to the house of her daughter during her stay with the accused person. She further stated that she does not know how her daughter led conjugal life with the accused. That accused informed them over telephone that her daughter fled away from his house. She admitted that she has not seen any incident of torture personally.
15. PW-5, Sri Ramen Borah (Retired SI) being the investigating officer of this case has stated in his evidence-in-chief that on 03.07.2018, he was posted at Borghat OP under Tezpur PS as SI and on that day O/C of Tezpur PS received an ejahar lodged by one Sri Gopal Mandal and accordingly, on received of the same, the O/C of Tezpur PS registered a case as Tezpur PS Case No-1391/2018, U/S-498(A)/346 of IPC r/w Section-4 of D.P. Act. Thereafter, O/C of Tezpur P.S. endorsed him to investigate the case and accordingly he started his investigation by visiting the place of occurrence and prepared sketch map. He identified

the sketch map prepared by him as P. Ext-2 wherein he put his signature as P. Ext-2(1). He also stated that he recorded the statement of the informant and other witnesses. Thereafter, he called the accused person to appear before the police station and accordingly, the accused person appeared before the PS and apprehended him after that allowed him to go on bail. He further stated that on conclusion of his investigation, he submitted charge sheet against the accused person Rafiquil Islam u/s-498(A) of IPC. He identified the charge sheet as P. Ext-3 wherein he put his signature as P. Ext-3(1).

16. PW-5 in his cross-examination has stated that the date of incident was on 29.06.2018 and the ejarah was lodged on 03.07.2018 after 4 days from the incident. He stated that he did not mention the name of witnesses at Sketch Map. He also stated that he did not record the statement of neighbor people. He only recorded the statement of the relative persons of the victim. He admitted the fact that PW-1 Gopal Mandal did not state before him that he came to know from his daughter that accused tortured upon her by demanding money. He further admitted the fact that the same witness did not state before him that she brought money from her uncle and aunt and paid the same to the accused. He also admitted the fact that the same witness did not state before him that the accused threatening her parents over phone due to not going to the house of accused. He admitted the fact that the same witness did not state before him that she brought Rs.10,000/- from her aunt and paid the same to the accused. He admitted that PW-3 Anju Laskar did not state before him that the victim sometime visited her house after scuffle with the accused. He further admitted the fact that the same witness did not state before him that on many occasion she paid money to the accused and one time she paid Rs.10,000/- to the

accused. He stated the fact that PW-4 Beauty Mandal did not state before him that accused tortured upon her daughter by demanding money.

17. I have minutely perused the evidences on record including the cross-examination of the witness. In this case, PW-1 is informant, PW-2 is victim and PW-4 is mother of victim. PW-3 is the relative of victim and PW-5 is the investigating officer of this case.
18. PW-2 being the victim of this case has deposed that after marriage the accused husband physically assaulted her in the year 2018 by demanding money and asked her to bring the same from her parental house. She gave Rs.10,000/- to the accused after bringing out the same from her aunt's house. Thereafter, again quarrel took place between them and she went to her friend's house and from where she called her father.
19. PW-2 in her cross-examination has stated that on several occasion she went from the house of accused having quarrel with him. She did not inform about her physical assault to any neighbouring people of their rented house situated at Nepali Patty. That she wanted to work at Guwahati and her husband did not permit her to go Guwahati for which quarrel took place between them. Hence she fled away from the house of the accused in his absence and she went to Guwahati and stayed at the house of her friend named Reema. She stayed there for about 20-22 days and from there she contacted with her father and who suggested her to go to police station and from there she went to her parent's house. She never came back to the house of accused. She never took treatment from doctor.
20. Now let me see whether the other witnesses examined by the prosecution side have supported and corroborated the versions of PW-2

wherein she had claim that the accused physically assaulted for demand of dowry. PW-1 who is the father of the victim has only deposed that his daughter had quarrelled with the accused on several times and went from the house of the accused person to some other places. In the year 2018, one day accused informed him over telephone that his daughter came out from the house having quarrel with him and as his daughter did not come to his house he lodged the ejarah against the accused person on suspicion that accused may kill his daughter. That his daughter herself went from the out of the accused person having quarrel with him. That he never seen any incident occurred between his daughter and the accused person. He further stated that he did not medically examine his daughter after torturing his daughter by accused person. So it appears that the PW-1 has not the eye witness of the demand of dowry, further no demand was done before him by the accused. He only heard about the incident from her daughter.

21. PW-3 who the aunt of the victim stated the PW-2 informed her that her husband physically assaulted her due to domestic quarrel and accused sometime asked the victim to bring money from her paternal house and as the victim did not have any visiting terms with her parents, she informed her about the demand of accused. She also stated that on many occasions she has paid money to victim and once she gave Rs.10,000/- to victim for paying the same to the accused. PW-3 in her cross-examination has stated that she never saw any incident. She could not say exactly what happened between the PW-2 and accused. She never paid any money to accused. That the statement that once she gave Rs.10,000/- to victim for paying the same to the accused was not stated before the I.O. when he recorded her statement.

22. Again PW-4 has deposed that stated in the month of June 2018, the accused tortured her daughter (PW-2) physically and mentally and demanded money and due to that she fled away from the house of accused. Her daughter took shelter at her friend's house. After 10-15 days her daughter came to their house and informed them about the incident. PW-4 in her cross-examination has stated that she never went to the house of her daughter during her stay with the accused person and she does not know how her daughter led conjugal life with the accused. Further she had not seen any incident of torture personally.
23. That the informant has also complained of assault of her daughter in his FIR. The victim PW-2 in her evidence has deposed that her husband assaulted her for demand of dowry but she did not go before the doctor for medical examination. In the FIR the complainant had also stated that on 29.06.2018 at night the above-named accused person without any reason physically assaulted his daughter and demanded money from her stating that she should bring the demanded money from her parental house and if she failed to give the said demanded money he would drive her out of her matrimonial house. In the evidence the PW-2 has deposed that she took Rs.10000/- from her aunt and paid the same to her husband. But in the F.I.R. the informant nowhere stated that her daughter took Rs.10000/- from her aunt and paid the same to her accused husband.
24. Thus, from the above evidence of all the PWs, it is seen that none of the PWs version corroborated with each other and also it is found that there were lot of contradictions with the statement of each of the PWs. Hence, it is found that there are no facts which could prove that the woman was subjected to cruelty in such a manner 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 it could be found that there was harassment caused to the woman in respect of demanding dowry to her.

25. That the PW-1, PW-3 & PW-4 are not the eye witness of the case they only heard from the incident from the PW-2. Further, the PW-1 and PW-4 are the parents of the victim PW-2. PW-3 is also her relative. These witnesses did not establish the case of the prosecution that the PW-2 was subjected to cruelty by her accused husband for demand of dowry.
26. Even from the evidence of PW-1, PW-3 and PW-4 no doubt it could be found that there were quarrels between the accused and the daughter of the informant but upon close scrutiny of all the evidences it is found that there were petty quarrels between them.
27. The Hon'ble Supreme Court in **Manju Ram Kalita v. State of Assam (2009) 13 SCC 330**, held that "Cruelty" for the purpose of Section 498(A) IPC is to be established in the context of Section 498 (A) IPC as it may be different from other statutory provisions. It should be determined 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 or at least in close proximity of time of lodging the complaint. The Court further held that petty quarrels cannot be termed as "cruelty" to attract the provisions of Sec. 498(A) IPC.
28. Thus in this case upon perusal of the evidence of all the prosecution side and also on relying on the decisions of Hon'ble Supreme Court in the case of **Manju Ram Kalita v. State of Assam** it is found that ingredients of section 498(A) I.P.C. founds not to exist. From the

evidence of prosecution is not found sufficient materials to hold the accused guilty U/S: 498(A) IPC.

29. Hence, considering all above discussions it appears that the prosecution has not proved the case against the accused person beyond reasonable doubt. Thus keeping view of what has been discussed above this court has no least hesitation that the prosecution has failed miserably to establish the guilt of the accused person U/S: 498(A) of I.P.C. Hence, the accused person, namely, Md. Rafiqul Islam is not found guilty.

ORDER

Accused person, namely, Md. Rafiqul Islam is acquitted from the Charge under section-498(A) of I.P.C. and set at liberty forthwith.

Bail-bond of the accused person is extended for six months in view of section-437A of Cr PC.

Judgment is prepared and pronounced in open court. Given under my hand & seal of this court on this 30th day of November, 2022 at Tezpur.

(Sri Nabajit Bhatta)
Chief Judicial Magistrate,
Sonitpur: Tezpur

Dictated and Corrected by me

Chief Judicial Magistrate,
Sonitpur: Tezpur

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

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Sri Gopal Mandal	INFORMANT
PW-2	Smt. Gayetri Mandal	VICTIM
PW-3	Smt. Anju Laskar	OTHER WITNESS
PW-4	Smt. Beauty Mandal	OTHER WITNESS
PW-5	Sri Ramen Borah	POLICE WITNESS

B. Defence Witnesses, if any:

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

B. Court Witnesses, if any:

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

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

Sr. No.	Exhibit Number	Description
1	Ext-1/PW-1	FIR
2	Ext-1(1)	Signature of PW-1
3	Ext-2/PW-5	Sketch Map
4	Ext-2(1)	Signature of PW-5
5	Ext-3/PW-5	Charge sheet
6	Ext-3(1)	Signature of PW-5

B. Defence:

Sr. No.	Exhibit Number	Description
NIL	NIL	NIL

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
NIL	NIL	NIL

B. Material Objects:

Sr. No.	Exhibit Number	Description
NIL	NIL	NIL

Chief Judicial Magistrate,
Sonitpur: Tezpur