

IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE

(M), GOHPUR.

P.R.C 51/19

U/S 498 (A) I.P.C

State

Vs

Sri Moon Saikia,

S/o. Sri Laxhi Prasad Saikia.

Vill: Pub_Ghogra Basti - Majgaon

P.S.- Gohpur, Dist: Biswanath, Assam.

..... Accused.

Present:

A. A. Choudhury, SDJM (M), Gohpur.

For prosecution:

Ms. Barnali Chetia, Ld. A.P.P

For defence:

Sri. Chandra Kt. Baruah, Ld. Advocate.

Date of evidence: 21.12.19, 28.02.20, 13.09.21.

Argument heard on: 19.01.22.

Judgment delivered on: 21.01.22.

JUDGMENT

(1) The case of the prosecution in a nutshell is that the informant namely Smti. Anjali Saikia has been cohabiting with accused Moon Saikia under matrimonial relationship since last 08 years and one daughter was born to them. During the pregnancy of the informant, the accused person alongwith his family members demanded dowry from the informant and also beaten her and attempted to even take her life. The accused person and his family members have driven the informant out of her matrimonial house and at present informant alongwith her daughter is taking shelter at her parental house. Hence the ejahar.

(2) The FIR/ejahaar was registered as a case vide Gohpur P.S. Case No. 69/19, U/S 498 (A)/323/506/34 I.P.C on 22.02.19 and on

completion of the investigation, Charge-Sheet was submitted U/S 498 (A) IPC against the accused person, namely Sr. Moon Saikia.

- (3) Accordingly, cognizance was taken and copies were served to the accused person and when particulars of offence under the aforesaid section of law was read over and explained to the accused person, the accused pleaded not guilty and claimed to be tried.
- (4) During the trial, the prosecution side has examined 04 (four) Prosecution witnesses, whereas, the defence side has also examined one defence witness, cross examined by the prosecution side. The case of accused is that of denial.

(5) Point for determination:

- (i). Whether the accused person being the husband of the informant wife, subjected her to physical and mental cruelty and also demanded dowry and thereby committed an offence punishable Under Section 498 A IPC?

Decision thereon and Reasons for the decision:

(6) In evidence, the informant as PW 1 namely Smti. Anjali Saikia deposed that she has lodged the ejahar against her husband. PW 1's marriage was solemnised with accused Moon Saikia in the year 2012. PW 1 stayed with the accused person at Pune for over a year and thereafter stayed at her in-laws house. Accused person returned to Pune with his previous wife, which PW 1 did not have any knowledge that accused person was previously married. Accused person stayed with both wives and used to beat PW 1. PW 1 tolerated the torture of accused person at Pune for one year. Accused person did not provide proper fooding to PW 1. After 02 years, PW 1 became pregnant. Accused person brought PW 1 at Tezpur for delivery of the child and kept PW 1 alongwith her baby at PW 1's maternal house. Accused person told the father of PW 1 that he will bear the expenses. While at Pune, accused person demanded Rs. 1 lakh as dowry for constructing house and used to beat PW 1 for non-payment of dowry. Accused person did not enquire about PW 1 and her daughter. As such, PW 1 lodged ejahar against the accused person on February 2019.

(7) In cross examination, PW 1 stated that she knows the contents of the ejahar. Accused person eloped with PW 1. PW 1 was not married to accused person. PW 1 stayed at the house of accused person at Gohpur for a month prior to birth of the child. PW 1 saw the child of accused person from his first wife, at house of accused person. During PW 1's stay at Pune, first wife of accused person and their daughter also stayed with her. PW 1 did not visit doctor for her abortion but her husband caused her abortion. PW 1 neither mentioned in her ejahar nor stated before police regarding demand of Rs. 1 lakh by the accused person. PW 1 has informed her father, family members and VDP Secretary regarding torture met to her by the accused person. PW 1 has not lodged any other ejahar prior to the instant one. PW 1 has denied the suggestions put to her.

8. PW 2 namely Sri. Suren Kakati deposed that he does not know the informant but knows the accused person, who is his neighbour. Moon Saikia (accused) has two wives. PW 2 does not know the second wife of accused person and cannot say why she has lodged the ejahar.

9. The cross examination of PW 2 was declined by the defence side.

10. PW 3 namely Kumud Kakati deposed that he does not know the informant but knows the accused person, who is his neighbour. PW 3 does not know about the incident. PW 3 cannot say why the instant case was instituted.
11. The cross examination of PW 3 was declined by the defence side.
12. PW 4 namely Diganta Baruah deposed that he does not know the informant but knows the accused person. PW 4 does not know about the incident.
13. The cross examination of PW 4 was declined by the defence side.
14. DW 1 namely Sri. Munindra Das deposed that he knows the accused person as accused is his immediate neighbour. DW 1 does not know the informant of the case. Marriage of accused person was solemnised with Bonti Saikia of Maj-Ghogra about 19-20 years ago. 03 daughters were born out of the wedlock, who are studying in various classes. Accused Moon Saikia stays at a joint family. DW 1 knows for certain that accused person has only one wife namely Bonti Saikia. DW 1 stated that accused person has not solemnised second marriage. DW 1 frequently/regularly

visits the house of accused person. House of PW Suren Kakati is about 01 km distance from house of accused person.

15. In cross examination, DW 1 stated that accused person was at Pune during 2019. After marriage of accused person, wife of accused stayed at her matrimonial house. As DW 1 is busy at agricultural work, hence, DW 1 is not able to know all the household affairs of accused person's house. DW 1 does not know about second marriage of accused person. DW 1 denied the suggestions put to him.
16. On perusal of the materials-on-record; it could be seen that the informant in Exhibit 1, which is the ejahar/FIR lodged by the informant, the informant alleged that the accused person alongwith his father and mother have, during pregnancy of informant, demanded dowry and beaten her causing injuries and also attempted on the life of the informant. It is further alleged that the accused person and his parents have driven the informant out of her matrimonial house, whereas, the informant in her evidence as PW 1, deposed that that she has lodged the ejahar against her husband. I do not find involvement of parents of accused person in the evidence of PW 1. In her evidence, PW 1

inter-alia deposed that PW 1 stayed with the accused person at Pune for over a year and thereafter stayed at her in-laws house. She also deposed that the accused person returned to Pune with his previous wife, which PW 1 did not have any knowledge that accused person was previously married. Accused person stayed with both wives and used to beat PW 1. PW 1 tolerated the torture of accused person at Pune for one year. Accused person did not provide proper fooding to PW 1. However, there is no allegation of second marriage or previous wife of the accused person in Exhibit 1. The deposition of informant/PW 1 that accused person stayed with both wives and used to beat PW 1 is a serious allegation which, however, is non-existent in Exhibit 1, lodged by the informant. The allegation of 'bigamy' is nowhere mentioned in the ejahar/Exhibit 1 and for that reason police station case has not been registered under appropriate sections attracting bigamy. It is only during the evidence stage, the allegations of bigamy has surfaced. From the evidence of PW 1, it can be well deduced that prior to lodging Exhibit 1, the depositions narrate about the previous wife of the accused person but the same does not find any mention in Exhibit 1, which does create some doubt in the veracity of the informant, as to why, the

informant did not mention about the alleged bigamy of the accused person, which the informant as PW 1 deposed in her evidence. PW 1 on her cross examination has inter-alia stated that her husband/accused has caused miscarriage to her but no such allegation exist in the ejahar/Exhibit 1 and moreover, informant in her ejahar stated that at present she is staying with her daughter at her parental house. In her evidence, PW 1 deposed that her marriage was solemnised with accused Moon Saikia in the year 2012 but however, in her cross examination, PW 1 denied having getting married with the accused person. In Exhibit 1, it has been inter-alia alleged that accused person alongwith his parents attempted to take the life of informant but the evidence does not support such a serious and grave allegation. Moreover, PW 1 in her cross examination stated that she has neither mentioned in her ejahar nor stated before police regarding demand of Rs. 1 lakh by the accused person. PW 2 in his evidence stated that PW 2 does not know the second wife of accused person and cannot say why informant has lodged the ejahar. PW 3 in his evidence stated that he does not know about the incident and cannot say why the instant case was instituted. PW 4 in his evidence deposed that he does not know about the incident. DW in his evidence

deposed that marriage of accused person was solemnised with Bonti Saikia of Maj-Ghogra about 19-20 years ago and 03 daughters were born out of the wedlock, who are studying in various classes. He further deposed that accused Moon Saikia stays at a joint family and knows for certain that accused person has only one wife namely Bonti Saikia, whereas the name of informant is Anjali Saikia. In his cross examination, DW 1 stated that he does not know about second marriage of accused person.

17. Therefore, from the above discussions, it can be concluded that there are plenty of contradictions and inconsistencies firstly, with that of the prosecution story and the evidence of the informant herself and secondly with the remaining witnesses. The informant's allegations made in the ejahar and depositions in her evidence are vastly inconsistent and to some extent doubtful on that account, as discussed in the preceding paragraph. Hence, for the reasons above, I find that the informant's case as well as evidence, being devoid of consistency, cannot be relied upon for the purpose of convicting the accused person. Moreover, none of the other witnesses have supported the prosecution case.

18. Also heard learned counsels for both sides. The submissions made by the counsels have been thoroughly considered.
19. Therefore, considering the case in its entirety and for the reasons stated above, the aforesaid issue is answered in the negative as the allegations against the accused persons are not convincing enough as has been discussed in the preceding paragraphs.
20. As a result of the foregoing discussions, the following Order is passed in this case.

ORDER

21. Accused person, namely, Sri. Moon Saikia stands acquitted in this case as prosecution side has failed to prove the guilt of the accused person beyond all reasonable doubts.
22. The accused person be set at liberty forthwith, if in custody and not wanted in any other case.
23. Judgment and Order is pronounced in open Court today in presence of the accused person.
24. Bail Bond to be discharged in accordance with law, after a period of 06 (six) months.

Given under my hand and seal of this Court on this the 21st day of January, 2022.

Accordingly, case disposed off.

A. A. Choudhury,
SDJM (M) ,Gohpur.

Sonitpur District Judiciary.

APPENDIX

Prosecution Witness:

- PW 1 – Smti Anjali Saikia.
- PW 2 – Sri Suren Kakati.
- PW 3 – Sri Kumud Kakati.
- PW 4 – Sri Diganta Baruah.

Prosecution Exhibits: NIL

Exhibit 1- Ejahar.

Defence Witness:

DW 1 – Sri. Munindra Das.

Defence Exhibits: NIL

Court Witness: NIL

A.A. Choudhury,
SDJM (M), Gohpur.

21.01.22:

Accused person is present in Court today.

Judgment and Order is pronounced in open Court today in presence of the accused person.

Judgment and Order is passed in separate typed sheets.

The following Order is passed in this case.

Keep the original copy of Judgment and Order alongwith the C/R.

ORDER

21. Accused person, namely, Sri. Moon Saikia stands acquitted in this case as prosecution side has failed to prove the guilt of the accused person beyond all reasonable doubts.
22. The accused person be set at liberty forthwith, if in custody and not wanted in any other case.
23. Judgment and Order is pronounced in open Court today in presence of the accused person.
24. Bail Bond to be discharged in accordance with law, after a period of 06 (six) months.

Given under my hand and seal of this Court on this the 21st day of January, 2022.

Accordingly, case disposed off.

A. A. Choudhury,
SDJM (M) ,Gohpur.

Sonitpur District Judiciary.