

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, LAKHIMPUR,
NORTH LAKHIMPUR, ASSAM**

Present: Sri Akhtabul Ala, AJS,
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur, Assam

G.R. 1369/2018

Under section 498-A/494 of the Indian Penal Code

State of Assam

-Vs-

Sri Gunamoni Borah

..... Accused

Date of framing charge	: 04.03.2020
Dates of recording evidence	: 04.03.2020
Date of examination u/s 313, Cr.P.C.	: 04.03.2020
Date of argument	: 04.03.2020
Date of judgment	: <u>04.03.2020</u>

Advocates appeared in the case:-

Sri Prasanta Dutta and Smti. Ajanta Sharma Baruah, Addl. P.P., for the State
Sri Sanjib Gogoi, Advocate, for the accused

J U D G M E N T

1. This case has arisen out of an ejahar lodged on 07.05.2018 by informant Smti. Pompei Borah with the Officer-in-Charge of Boginadi Police Station alleging therein that the accused Sri Gunamoni Borah, who is her husband, on 06.06.2018 at about 12:00 PM, left his house to work in a company in concern with his livelihood. It is further alleged that through reliable source the informant came to know that her husband i.e the

accused had eloped away a girl namely Smti. Apeli Hajong, resident of Kakoi Chariali. Hence, the case.

2. The Officer-In-charge of Boginadi Police Station on receipt of the ejahar registered a case vide Boginadi P.S. Case No. 105/2018 under section 366 of the Indian Penal Code and got the investigation into the case commenced. The investigating officer, after completing the investigation, submitted charge-sheet under section 498-A/494 of the Indian Penal Code against the accused Sri Gunamoni Borah to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence under section 498-A/494 of the Indian Penal Code was taken as per section 190(1)(b) of the Code of Criminal Procedure. Necessary copies were furnished to the accused as per section 207 of the Code of Criminal Procedure after his appearance before the Court. After considering the materials on record and hearing both the sides, charge under section 498-A/494 of the Indian Penal Code was framed in writing against the accused. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution the informant cum victim as PW-1. The prosecution had exhibited the ejahar as Ext-1 and the signature of the informant (PW-1) therein as Ext-1(1). The defence side has cross-examined the prosecution witness. Now considering the nature of the evidence of the PW-1 the prosecution closes further evidence as other PWs are not likely to change the merit of this case. After the closure of the prosecution evidence, the accused was examined under section 313 of the Code of Criminal Procedure wherein he pleaded his innocence. He declined adducing any defence evidence.

5. Both the sides advanced their respective arguments in this case.

POINTS FOR DETERMINATION:

6. The points which are required to be determined for a just decision of this case are as follows:

(a) Whether the accused being the husband of informant-cum-victim Smti. Pompei Borah, had subjected her to cruelty by committing physical and mental tortures on her posing a threat to her life and limb ?

(b) Whether the accused on 06.06.2018 at about 12:00 PM at Kakoi Chariali under Boginadi Police Station, having a wife namely Smti. Pompei Borah living married again Smti. Apeli Hajong, such marriage being void by reason of its taking place through the life time of the said wife?

DISCUSSION, DECISION AND REASONS THEREOF:

7. To determine the aforesaid points of determination let us have a scrutiny of the evidence on record.

8. PW-1 Smti. Borah, informant cum victim has stated in her evidence that the accused is her husband with whom she had married about 12 years back and out of this wedlock she has a son and a daughter. She further stated in her evidence that a year back the accused went to Kerela to work as a driver in the house a Conanel and used to stay therein Kerela. In the meantime, for being busy with his work he could not come to home for long for which she got under a misconception that he might have found some other girl there. She further stated in her evidence that when her husband came home later after long time she had a quarrel with him and out of a misunderstanding had lodged the instant case against

him and later she could come to know that he did not perform any second marriage in this case in fact was lodged only out of a misunderstanding and presently she is residing in her husband's house along with her children and leading a peaceful conjugal life.

9. In her cross-examination, PW-1 testify that the ejahar was written by someone else and she was not aware about the contents of the same and that she has no objection if the accused is acquitted as this case arose only out of a misunderstanding.

10. Thus, it is quite apparent from the evidence on record that PW-1 the informant and victim of this case has not at all implicated the accused and she has not even stated anything about the occurrence as alleged by the prosecution. As per her version, only an altercation took place between the her and her husband i.e. the accused out of a misconception when he returned from Kerela as she thought that he had married another girl there and out of misunderstanding she lodged the instant case but subsequently she came to know that the accused had not performed any second marriage and presently she along with her children are residing with the accused leading a peaceful conjugal life. That apart, nothing else had happened. She clarified in her cross-examination that she does not have any objection if the accused is acquitted as this case arose only out of a misunderstanding. Thus, there is not an iota of evidence to suggest that the informant and victim (PW-1) was harassed by the accused by causing any grave injury to her either physically or mentally or that the accused entered into second marriage during the lifetime of his wife as alleged.

11. So, in the given position from the evidence on record it can no way be held that the accused has subjected the informant and victim to

cruelty by committing physical and mental torture on her or entered into second marriage during her life time. Hence, both the aforesaid points of determination are held in negative.

12. In the result, the prosecution has failed to prove the charge against the accused under section 498-A/494 of the Indian Penal Code and as such he is acquitted from the said charge and is set at liberty.

Bail bonds are extended to for the further 6(six) months from today.

The judgment is delivered and operative part of the same is pronounced in the open court on this 04th day of March, 2020.

(Sri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Dictated and Corrected by me:

(Sri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Transcribed and typed by me:
Narayan Chetri, Stenographer

Continued (Appendix)

A P P E N D I X

WITNESSES FROM THE PROSECUTION SIDE

Smti. Pompei Borah (PW-1)

PROSECUTION EXHIBIT

Ejahaar (Ext-1)

Signature of PW-1 [Ext-1(1)]

WITNESSES FROM THE DEFENCE SIDE

Nil

DEFENCE EXHIBIT

Nil

(Sri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur