

**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. 798/2016

Under section 498-A of the Indian Penal Code

State of Assam

-Vs-

Sri Dilip Borah

..... Accused

| | |
|--------------------------------------|-----------------------------------------------------------------------------------------------|
| Date of framing charge | : 28.06.2016 |
| Dates of recording evidence | : 15.09.2016, 29.09.2016, 09.03.2017, 22.06.2017, 30.10.2017, 29.10.2018, 24.09.2019 |
| Date of examination u/s 313, Cr.P.C. | : 18.11.2019 |
| Date of argument | : 15.02.2020 |
| Date of judgment | : <u>12.03.2020</u> |

Advocates appeared in the case:-

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

J U D G M E N T

1. The Prosecution story in brief is that one Smt Bina Bora had lodged an ejahar before the i/c Nowboicha P.S alleging inter alia that her husband Dilip Bora alongwith his mother had been causing severe physical and mental atrocities on her as her mother-in-law tried to show her as a witch and had even demanded an Assam type house in dowry from her and for

that subjected her to severe physical torture and even tried to pour kerosene over her and set her ablaze. Hence, the case.

2. On receipt of the ejahar, the In-charge of Nowboicha Police Outpost effected a G.D. Entry vide Nowboicha O.P. G.D. Entry No. 190 dated 10.04.2016 at 2:00 PM and forwarded the ejahar to the Officer-in-charge of North Lakhimpur Police Station to register a case under proper section of law. After receiving the ejahar, the Officer-in-charge of North Lakhimpur Police Station registered a case vide NLPS Case No. 344/2016 under section 498-A/325/307/34 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/323 of the Indian Penal Code against the accused Sri Dilip Borah to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence under section 498-A/323 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 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 altogether examined 7 (five) witnesses, including the M/O and the I/O viz. Smti. Bina Borah as PW-1, Sri Achinta Nath as PW-2, Sri Niren Borah as PW-3, Sri Jugal Nath as PW-4, Sri Thaneswar Nath as PW-5, Dr. Kiran Chandra Chetia, the M/O as PW-6 and SI Hem Chandra Das, the I/O as PW-7. The prosecution had exhibited the ejahar as Ext-1 and the signatures of the informant and victim (PW-1) therein as Ext-1(1), the medical examination report as Ext-2 and the

signature of the M/O therein as Ext-2(1), the extract copy of the G.D. Entry as Ext-3, the rough sketch map of the place of occurrence as Ext-4 and the signature of the I/O as Ext-4(1) and the charge-sheet as Ext-5 and the signature of the I/O as Ext-5(1). The defence side has cross-examined the prosecution witnesses. 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.

POINT FOR DETERMINATION:

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

(a) Whether the accused since after 10(ten) days of his marriage with the informant and victim Smti. Bina Borah solemnized on 29.05.2014 and subsequently on various occasions i.e. on 01.01.2015 and 02.03.2015 has subjected her to cruelty by torturing her physically as well as mentally to coerce her to meet his demand of dowry and even tried to set her ablaze by pouring kerosene on her body posing a threat to her life and limb ?

DISCUSSION, DECISION AND REASONS THEREOF:

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

8. The PW-1 Smti. Bina Borah i.e. the informant and the victim of this case had testified that after 10 days of her marriage with the accused he and his mother told her to be a witch and had tortured her in a myriad of ways. They beat her with broom, dao and lathi and had demanded her to make them an Assam type house. When she failed to comply the accused

had pressed her neck and had punched in her face for which she bled . Again on 09-04-2016 the accused tried to set her ablaze by pouring kerosene over her but he couldn't pour the kerosene as she entered inside her room. She on the following they fled from the house of accused and had lodged an ejarah against the accused. She had called from the police station asking her husband i.e. the accused to take her to his home but he didn't come.

9. PW-1 stated that she had approached the Mahila Samity and she was taken to the medical by the Mahila Samiti members for treatment as she sustained injuries in her face and neck.

10. Now let us see what the other PWs have to say on this matter. The PW-2 Sri Achinta Nath testified in her evidence that about 7-8 months back one evening she was informed by her mother that there was a hue and cry in the house of the accused who is their neighbor and since after that hue and cry the informant had not been living in the house of the accused.

11. PW-2 in his cross examination had stated that he is having visiting terms with the house of the accused and sometimes visit them but he never saw any quarrel between them.

12. PW-3 Niran Bora deposed that the accused and the informant are husband and wife but they are not residing together now. He stated that on 27-08-2015 Sri Babul Bora the elder brother of the informant called him and Secretary Thaneswar Bora to the house of the accused and told that his sister was beaten up. They as such had visited the house of the accused and came to know that the mother of the accused had inflicted physical torture on the informant and the said fact was told to them by the father of the accused and so they negotiated and settled the matter but after about 4-5 months the informant had lodged an ejarah at Nowboicha Police Outpost and he was also called there at the police

outpost by Babul Bora the elder brother of the informant. The informant told him that she was beaten by the accused and his mother.

13. PW-4 Jugal Nath testified that the informant has not been living with the accused for about 6 months and that there were quarrel between both sides for which the Gaonbura had held several meetings to negotiate their problems and he too was present in a couple of such meetings. They used to amicably settle their disputes but they again used to quarrel with each other.

14. PW-4 further stated that about 6 months back the informant came to their house by leaving her husband's house and he could come to know from his wife that the informant left the house of the accused because of fighting and that she will not return back to his house,

15. PW-4 in his cross examination had stated that he had never seen any 'maarpit' between the informant and the accused.

16. PW-5 Sri Thaneswar Nath deposed that after about 6 months of the marriage between the informant and the accused they had fighting with each other for which on five occasions village meetings were held and he was also present in the said meetings apart from the gaon buras and in every such village meetings they used to settle the differences of both sides and both the parties used to assure that they would not fight with each other but now the informant is not residing in the house of the accused and she is residing in the house of her elder brother.

17. The PW-6 Dr. Kiran Ch. Chetia stated that on 10-04-2016 while he was working as Sub Divisional Medical and Health Officer at Naoboicha PHC he had examined Smt Bina Bora and on her examination she found no signs of injury on her person.

18. Now a look at the evidence of the PWs goes to show that though the PW-1 stated that the accused alongwith his mother had always

demanded dowry from her that of making an Assam house for them bringing money from her parent's house but the PW-3, PW-4 and PW-5 who were the village elders and had on several occasions went to negotiate between the informant and the accused and were in fact as such well aware about the dispute between the informant and the accused had not stated anything about the accused demanding any dowry from the informant. They in fact stated that it was a quarrel and fighting between a husband and wife and they both used to fight with each other as PW-5 stated that in the village meetings both the informant and the accused used to assure that they will not fight with each other in future. These village elders examined as PWs as discussed above didn't state anything about any issues of dowry demand by the accused but only about a quarrel between a husband and wife. Had demand of dowry been the core of issue for the dispute between the informant and the accused as stated by the PW-1 then these village elders examined as PWs who held meetings to negotiate their dispute would have definitely stated about such demand of dowry by the accused but they never stated it to be a topic of discussion which creates a serious doubt on the allegation made by the PW-1 that of demand of dowry of constructing an Assam type house.

19. Now the PW-1 also stated that the accused had severely beaten her up and she was bleeding and the Mahila Samiti members had got her medically treated but the PW-5 the M.O stated that she on examination of PW-1 didn't find any injury on her body. The prosecution has failed to show any medical proof of the PW-1 sustaining any injury which goes to totally negate her claim of sustaining injury due to assault by the accused.

20. So the prosecution has failed to show that the accused had committed any physical tortures on the PW-1 posing threat to her life and limb.

21. Again a vital aspect can't be over looked is that the prosecution has failed to examine any of the family members of the PW-1 i.e the father, mother or brother of the PW-1. Had there been any such demand of dowry and physical and mental tortures on the PW-1 then her family members would have been the best person to know but the prosecution failed to examine them which goes to cast a serious doubt on the prosecution story.

22. So in the backdrop of the discussion above it can no way be concluded that the accused had subjected the informant to cruelty by committed physical and mental tortures on her demanding dowry and consequently the aforesaid point of determination is held in negative.

23. So the prosecution has failed to prove the charge against the accused under section 498-A of the Indian Penal Code and as such he is acquitted from the said offence 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 12th 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. Bina Borah (PW-1)

Sri Achinta Nath (PW-2)

Sri Niren Borah (PW-3)

Sri Jugal Nath (PW-4)

Sri Thaneswar Nath (PW-5)

Dr. Kiran Chandra Chetia, the M/O (PW-6)

SI Hem Chandra Das, the I/O (PW-7)

PROSECUTION EXHIBIT

Ejहार (Ext-1)

Signatures of the informant and victim [Ext-1(1)]

Medical examination report (Ext-2)

Signature of the M/O [Ext-2(1)]

Extract copy of the G.D. Entry (Ext-3)

Rough sketch map of the place of occurrence (Ext-4)

Signature of the I/O [Ext-4(1)]

Charge-sheet (Ext-5)

Signature of the I/O as [Ext-5(1)]

WITNESSES FROM THE DEFENCE SIDE

Nil

DEFENCE EXHIBIT

Nil

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