

demanding dowry due to which the informant lodged an FIR in police station, but, subsequently, the same was settled amicably and withdrawn on 15.06.2016. However, the accused persons again on 15.06.2016 during night hours at about 09:10 PM assaulted the informant physically and abused her by using obscene language and also threatened to kill her. The informant then lodged an FIR about the occurrence before the O/C of Laluk police station.

2. On receipt of the F.I.R, a case was registered being numbered as Laluk P.S Case No. 196/2016. After investigation, I.O of the case submitted charge sheet against accused persons Sri Bimal Biswas, Sabita Biswas and Asha Biswas for the offence punishable u/s 498(A) of IPC. Copies of relevant documents were furnished to the accused persons u/s 207 CrPC. Considering the relevant documents and hearing both the parties, charge was framed for the offence punishable u/s 498(A) of IPC against all the three above named accused. The charge was then read over and explained to the accused persons to which they pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined eight witnesses, whereas the defence did not examine any witness. The accused persons were examined u/s 313 of CrPC. Defence case is of total denial as it reveals from the statements made by accused persons and the tenor of cross-examination of prosecution witnesses by defence. I have heard the learned counsel for both the parties.

4. Upon hearing and on perusal of record I have framed the following point for determination-

5. **POINTS FOR DETERMINATION:**

(i) Whether accused Sri Bimal Biswas married informant Smt. Gitu Borah Biswas and thereafter all the three accused on 15.06.2016 at about 09:10 PM and also on various other dates, subjected the informant to torture, both mentally and physically, with a view to coerce her to meet an unlawful demand of dowry; or thereby caused grave injury or danger to her life, limb or health, and thereby committed an offence punishable u/s 498(A) of IPC?

DISCUSSION, DECISION AND REASONS THEREOF:

POINT NO. 1

6. As regards the aforesaid point for determination, the most vital witness examined by the prosecution is informant/PW-5 Smt. Gitu Borah. Therefore, let me first proceed with the discussion of evidence deposed by informant/PW-5.

7. The informant/PW-5 in her evidence-in-chief has alleged that after her marriage in the year 2007, she along with her husband (accused) Sri Bimal Biswas went to Itanagar and started to reside there as husband and wife. After six months of marriage, her husband started to say that she failed to bring the necessary articles from her mother's house at the time of marriage. Eventually, her husband started to torture her physically as a result of which she sustained injury on her face. Unable to bear the torture, she went back to her mother's house after 7-8 months of marriage, but her husband subsequently brought her back to his house. Thereafter, all the accused persons again tortured her and said that they will not allow her to go back to her mother's house.

8. The foregoing statements of PW-5, in my opinion, clearly attract the ingredients of the offence punishable u/s 498(A) of IPC. Therefore, it is necessary to find out that whether the aforesaid statements made by PW-5 are reliable enough to base a conviction against the accused persons.

9. In order to find out the credibility of the aforesaid allegations made by PW-5, at the very outset, it is seen that the PW-5 in her cross-examination has clearly denied the suggestion of defence that she did not mentioned the aforesaid allegations in her statement before police/I.O. However, the I.O of this case, namely, ASI Tapan Lahan, as PW-8 in his cross-examination has confirmed that informant/PW-5 in her statement u/s 161 of CrPC did not mentioned the aforesaid allegations. In my opinion, the aforesaid allegations are material part of the alleged occurrence, and as such, the PW5/informant would have definitely stated the same in her very initial statement before I/O had the occurrence actually took place as alleged. Therefore, the omission/failure of PW-5/informant to mention the aforesaid allegations in her statement before I.O is clearly a material contradiction as per section 162 of CrPC which renders the aforesaid allegations unreliable.

10. In addition to the above, PW-5/informant in her evidence-in-chief has also alleged that her husband often used to call his friends to his house and then

falsely allege that she is having affair with those friends. Further, the accused persons on one occasion took her to Laluk hospital and aborted her pregnancy. The accused persons also said that she will have to bring rice, clothes, etc if she goes to her mother's house.

11. As regards the foregoing allegations, the informant/PW-5 in her cross-examination has specifically admitted that she did not mentioned those allegations in her statement before I/O. Needless to mention here that the aforesaid allegations are material part of the alleged occurrence. As such, the PW1/informant ought to have mentioned those allegations in her initial statement u/s 161 of CrPC before I/O. Therefore, failure/omission of informant/PW-5 to mention those allegations in her statement before I/O is a material contradiction as per section 162 of CrPC which renders those allegations unreliable.

12. The PW-5/informant in her evidence-in-chief has further alleged that her husband tortured her physically on the night of 15.06.2016, i.e., on the previous day of lodging Exhibit-1 FIR. It is important to note here that PW5/informant in her evidence has nowhere specifically stated the consequence of aforesaid alleged torture. To be more specific, there is no statement of PW5 regarding any injury (mental or physical)sustained as a result of the aforesaid alleged torture. Moreover, perusal of the evidence of medical officer/PW-6 Dr. Mridul Borah shows that except pain with tenderness over chest and left shoulder joint, no other substantial injury was detected on the body of informant. Under such circumstances, it is clear that the evidence on record do not satisfactorily show that any **grave injury or danger** was caused to the life limb or health of the informant as a consequence of the aforesaid torture. Needless to mention here that in order to attract Section 498(A) of I.P.C, it must be proved that **grave injury or danger**is caused to the life, limb or health of the wife by the wilful conduct of accused.

13. Besides the above, PW-1 Sri Braja Krishna Das, PW-2 Sri Birendra Biswas, PW-3 Sri Nagen Das, PW-4 Sri Bashana Biswas and PW-7 Smt. Malati Biswas in their respective evidence have not stated anything about any torture or harassment by the accused persons upon the informant. In fact, all the aforesaid witnesses have simply stated that there took place an altercation between the

informant and her husband. It is worth mentioning here that PW-3 Sri Nagen Das, who is not related to either of the parties, has went a step ahead by stating that the informant willingly left her matrimonial home. In my opinion, had the occurrence took place as alleged by the informant, then atleast a single independent witness would have directly or indirectly supported some of the allegations, made by the informant/PW5.

14. Therefore, considering the entire discussion made above, I find that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that the accused persons have committed the offence u/s 498(A) of IPC as alleged.

DECISION: This point is therefore decided in the negative and goes against the prosecution.

ORDER

15. In view of the discussions made above and the decisions reached in the foregoing points for determination, it is held that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that accused persons Sri Bimal Biswas, Smti Sabita Biswas and Smti Asha Biswas have committed the offence punishable under section 498(A) of IPC as alleged, and as such, the said accused persons are acquitted of the charge under section 498(A) of IPC and they be set at liberty forthwith.

The bail bond of the accused persons shall remain in force for another six months from today.

This judgment is given under my hand, and seal of this court on this the 25th day of January, 2021.

The case is disposed of on contest.

(F. U Choudhury)
Additional Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

APPENDIX**PROSECUTION EXHIBITS:**

- Exhibit.1 – FIR
- Exhibit.2 – Medical report
- Exhibit.3 – Sketch map
- Exhibit.4 – Charge-sheet

PROSECUTION EXHIBITS:

NIL

PROSECUTION WITNESSES:

1. PW-1 – Sri Broja Krishna Das @ Biswas
2. PW-2 – Sri Birendra Biswas
3. PW-3 – Sri Nagen Das
4. PW-4 – Sri Bashana Biswas
5. PW-5 – Smt. Gitu Borah
6. PW-6 – Dr. Mridul Borah
7. PW-7 – Smt. Malati Biswas
8. PW-8 – Sri Tapan Lahan

Defence Witnesses:

NIL

(F. U Choudhury)
Additional Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur