

**IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE
AT NORTH LAKHIMPUR**

G.R CASE NO: 3313 OF 2016
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SRI SEUJ BORAH

DISTRICT: NORTH LAKHIMPUR
IN THE COURT OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, AT NORTH LAKHIMPUR

GR CASE NO: 3313 / 2016

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

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI SEUJ BORAH

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA
ADVOCATE FOR THE ACCUSED: SMTI M. DOLEY

CHARGE FRAMED ON : 06/07/2018
EVIDENCE RECORDED ON : 22/07/19, 24/09/19, 05/06/2020

ARGUMENT HEARD ON : 22/03/2021
JUDGMENT DELIVERED ON : 22/03/2021

JUDGMENT

PROSECUTION'S CASE IN BRIEF:

1. Prosecution's case in brief as it reveals from the FIR is that informant Smt. Nibedita Gogoi got married to accused Sri Seuj Borah about two years prior to the lodging of this case. After marriage, the accused started to torture the informant mentally and physically by demanding dowry. The informant tolerated all the torture for about two years. Thereafter, on

29.12.2016 the accused tortured the informant physically and tried to kill her by pouring kerosene and setting fire on her body. The accused thereafter ousted the informant from his house on the evening of that day and asked her to bring motorcycle, money, other dowry articles from her father's house. The informant then took shelter in her father's house. On the next day, informant's parents again sent her back to the house of accused, but after arriving in the house of accused the informant saw that the accused had set ablaze all the articles belonging to informant. The informant then came back and lodged an FIR about the occurrence before the In-charge of Khelmati police out-post.

2. On receipt of the F.I.R, a case was registered being numbered as North Lakhimpur P.S Case No. 1305/2016. After investigation, I.O of the case submitted charge sheet against accused Sri Seuj Borah for the offences punishable u/s 498(A)/307 of IPC. Accordingly, copies of relevant documents were then furnished to accused Sri Seuj Bora and this case was committed to the court of Hon'ble Sessions Judge, Lakhimpur, North Lakhimpur but the Hon'ble Sessions court was pleased to frame charge against the said accused for the offences punishable u/s 498(A) of IPC and transfer the case to this court for trial.

3. The prosecution in support of its case examined six witnesses, whereas the defence did not examined any witness. The accused was 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 points for determination-

5. **POINTS FOR DETERMINATION:**

(i) Whether the accused married informant Smt. Nibedita Gogoi and thereafter on various dates including 29.12.2016 subjected the informant to torture, both mental and physical, with a view to coerce 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 THEREOF:**POINT NO. 1:**

6. As regards the aforesaid point for determination, the most vital witnesses examined by prosecution are the informant/PW-2 Smt. Nibedita Gogoi, informant's mother/PW-1 Smt. Usha Gogoi and informant's father/PW-4 Sri Babul Ch. Gogoi. Perusal of the evidence deposed by said three witnesses shows that the crux of allegation made by them is that the accused married informant about 4-5 years back and thereafter started to torture the informant mentally and physically by demanding dowry, articles including cash money. Thereafter, on 29.12.2016 during night hours, the accused again demanded dowry from the informant and thereafter assaulted her physically and also tried to kill her by pouring kerosene and setting fire on her body. On the next day, the informant while going to the house of accused came to know that the accused had set ablaze all her clothes. The foregoing allegations, in my opinion, if presumed to be reliable, will attract the ingredients of the offence punishable u/s 498(A) of IPC. Hence, it is necessary to find out that whether the above evidence deposed by PW-1, PW-2 and PW-4 can be relied upon to form a conclusive opinion against the accused.

7. In order to find out the credibility of the version deposed by prosecution witnesses as narrated above, at the very outset it is seen that PW-1, PW-2 and PW-4 in their respective cross-examinations have specifically admitted that the informant got married to another person prior to her marriage with the accused and she is not yet divorced by her first husband. The foregoing fact, in my opinion, clearly shows that the alleged marriage between informant and accused is not valid in view of the provision contained in section 5(i) of Hindu Marriage Act 1955 which requires that neither party should have a spouse living at the time of marriage.

8. In addition to the above, PW-1 and PW-4 in their respective cross-examination have specifically stated that the alleged marriage between informant and accused was not solemnised socially. This suggests that no specific rites and rituals were performed in accordance with section 7 of the Hindu Marriage Act 1955 which requires that a Hindu marriage may be

solemnised in accordance with the customary rites and ceremonies of either party thereto.

9. From the discussion made above, I find that the alleged marriage between informant and accused is not valid in the eye of law, and as such, the informant cannot be legally said to be wife of accused. At this juncture, I would like to mention that in order to attract the offence punishable under section 498(A) of IPC, it is very much essential to prove that the accused is the husband of the victim, or relative of the husband of victim. Under such circumstances, and having regard to the discussion made above, it is evident that the offence u/s 498(A) of IPC is not applicable to this case as the prosecution has failed to prove beyond reasonable doubts that the informant/PW-2 is the wife of accused.

10. Besides the above, it is noticeable that the informant/PW-2 in her cross-examination has specifically alleged that the accused tortured her physically and tried to set fire on her body by pouring kerosene and also set ablaze her clothes, but, in her cross-examination, the PW-2/informant has denied the suggestion of defence that she did not mention those allegations in her statement before I/O. In this respect, PW-6/I.O Sri Rajib Das, who investigated this case, in his cross-examination has confirmed that PW-2 did not mention those allegations in her statement before him/PW-6. In my opinion, had the occurrence taken place as alleged then the informant/PW-2 would have definitely mentioned the aforesaid allegations in her very initial statement before I.O/PW-6. As such, failure of PW-2 to mention those allegations before I.O/PW-6 is clearly a material contradiction as per Section 162 of CrPC which creates doubt as regards the credibility of her aforesaid allegations.

11. Moreover, PW-5 Dr. Banani Sharma, who being the medical officer on duty, examined the informant on 30.12.2016 but did not find any sign of external injury. This shows that the version stated by M.O/PW-5 does not support the allegation of assault; rather, the fact that PW-5 did not find any injury creates doubt regarding the credibility of the statement made by PW-1, PW-2 and PW-4 with respect to the alleged assault by accused.

12. Coming back to the version of PW1, it is seen that she has specifically stated in her cross-examination that she did not see the accused assaulting the informant and she heard the same from the informant only. Similarly, PW-4 in his cross-examination has also stated that he did not see the accused demanding dowry or beating the informant. This shows that the above allegations made by PW-1 and PW-4 as regards the demand of dowry and alleged assault are totally hearsay and the same cannot be relied upon unless corroborated by some other piece of evidence.

13. Considering the entire discussion made above, I find that the witnesses examined by prosecution have failed to prove beyond reasonable doubt that the accused legally married the informant and thereafter tortured her 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.

DECISION: Point no.1 is therefore decided in the negative and goes against the prosecution.

ORDER

10. 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 Sri Seuj Borah has committed the offence under section 498(A) of IPC as alleged, and as such, the said accused is acquitted of the charge under section 498(A) of IPC on benefit of doubt and he 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 22nd day of March, 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 WITNESSES:

1. PW-1 – Smt. Usha Gogoi
2. PW-2 – Smt. Nibedita Gogoi
3. PW-3 – Sri Jayanta Hazarika
4. PW-4 – Sri Babul Ch. Gogoi
5. PW-5 – Dr. Banani Sharma
6. PW-6 – Sri Rajib Das

DEFENCE EXHIBITS:

NIL

DEFENCE WITNESSES:

NIL

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