

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS

North Lakhimpur, Lakhimpur

PRESENT: Ms. Sparsita Garg, M.A, LL.M, AJS

Judicial Magistrate First Class,

Lakhimpur, North Lakhimpur

G.R. Case No. 1046/2013

State

Versus

Md. Hobibur Rahman

(Under section 498(A) IPC)

Charge framed on : 01.07.2014

Evidence recorded on : 14.12.2015, 17.03.2018,
15.10.2019, 15.02.2020,
12.03.2021

Statements recorded on : 19.03.2021

Arguments heard on : 08.04.2021

Judgment delivered on : 28.04.2021

Advocate for the Prosecution : Mr. Jangki Doley

Advocate for the Accused : Md. Eunos Ali

J U D G E M E N T

- 1.** Accused stood for trial for commission of offence u/s 498(A) IPC.
- 2.** Prosecution case in brief is that the informant Musstt. Mofida Begum lodged this complaint petition before the Learned District Magistrate, Lakhimpur alleging interalia that she got married to the

GR CASE NO. 1046/2013

accused one and half years back as per Islamic Shariat rites and laws. After five months of marriage her husband demanded dowry and started to torture her mentally and physically and for this incident she lodged an ejahar against the accused. On 02.06.2012 the accused somehow induced the informant to withdraw her case as he promised not to repeat such tortures on her in the future. Thereafter, she was taken to the house of the accused. Due to co-habitation she gave birth to a male child aged about 6 months. After two months of the birth of her child the accused again demanded Rs. 1,00000/- (Rupees One Lakhs Only) and thereafter tortured her mentally and physically and she was often beaten up to bring money from her father. The accused very often chased the informant with a dagger and thoroughly assaulted her and finally drove her out with her minor child from her matrimonial house. Hence, this case.

3. The said complaint petition was forwarded to Officer-in-Charge of Bihpuria PS and on receipt of the ejahar, Officer-in-Charge of Bihpuria Police Station registered the case as Bihpuria P.S. case no. 155/2013, u/s 498(A) IPC. Thereafter Investigating Officer launched investigation of the case and submitted chargesheet u/s 498 (A) of the Indian Penal Code against the accused namely Md. Hobibur Rahman.

4. Thereafter, cognizance has been taken and summon have been issued to the accused. On appearance of accused, necessary documents required u/s 207 Cr.P.C have been furnished to them. On perusal of the materials on record formal charges under section 498 (A) IPC is read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

5. Prosecution in support of its case has examined only 6 (six) witnesses.

6. The statement of the accused u/s 313 of the Code of Criminal Procedure was recorded in which the accused denied all the allegations leveled against him. Accused denied adducing evidence in defence.

7. I have heard the arguments advanced by the learned counsel for the accused person and Ld. A.P.P. Perused the materials available in the case record. Upon hearing both the parties and on perusal of the record, following points for determination are formulated for proper adjudication of this case.

POINTS FOR DETERMINATION:

Point No 1: Whether the accused being the husband of the informant Musstt. Mofida Khatoon tormented mental and physical torture on her on various occasions in demand for dowry and drove her out from her along with her minor son matrimonial house and thereby committed an offence punishable u/s 498 (A) of IPC?

DISCUSSIONS, DECISIONS AND REASONS THEREOF:

8. Now let me try to decide the above points by appreciating the evidence available in the case record. I have carefully considered the evidence available in the instant case. In order to establish a charge under section 498 (A) of the Indian Penal Code, the prosecution is required to prove that the husband of the informant had tortured her mentally and physically in order to fulfill unlawful dowry demands.

9. The informant/**P.W-1 Mofida Khatoon** is the informant of this case and in her evidence she stated that she got married to the accused three years back and she lived with him for five months. After her marriage the accused demanded dowry and assaulted her for which she lodged an ejahar. As she was pregnant at that time she compromised the matter and withdrew her case. She again went to her matrimonial house but after the birth of her child the accused again tortured the informant mentally and physically and demanded Rs.50,000/- (Rupees Fifty Thousand Only).

In her cross examination P.W-1 admitted that she earlier lodged cases against the accused for committing rape on her and for performing a fake marriage with her. Though this witness stated that her husband demanded dowry and she was often subjected to physical and mental torture but her evidence is required to be corroborated by other witnesses.

10. PW-2 Samed Ali and PW-3 Kulsum @ Kursan Bibi are

the parents of the informant and both the witnesses stated that their daughter was demanded dowry by the accused/husband and she was subjected to mental and physical harassment by the accused. Both the witnesses remained silent as to what amount of cash was demanded by the accused/husband. Further both the witnesses remained silent that the accused assaulted the informant.

In this case the informant and her parents alleged that the accused demanded dowry and she was subjected to physical and mental torture. All the three witnesses i.e. PW-1, PW-2 and PW-3 are highly interested witnesses and their evidence is required to be corroborated by other witnesses. Further, it appears that there is no medical evidence or report to show that the informant cum victim received any injury on her person. According to the informant and her parents the incident occurred at the house of the accused and therefore there may not be any eye-witness to the occurrence. However, had there been any demand for dowry or such frequent assault on the informant, the neighbours would have some knowledge about such occurrence.

11. P.W-4 Abdul Kadir and P.W-5 Jubed Ali are independent witnesses. P.W-4 in his evidence stated that he does not know anything about the incident and he also does not know what happened between the parties. P.W-5 stated that after the marriage both parties separated but he does know the reason for such separation. Thus both the witnesses did not support the prosecution case.

12. P.W-6 Bhupendra Pagag is the investigating officer of this case. He described the steps taken by him during investigation and proved the sketch map marked as Exhibit 1 and chargesheet marked as Exhibit 2. The investigation officer at best can support the prosecution case but he alone cannot prove the guilt of the accused.

13. The evidence on record shows that the informant and her parents supported the allegations of demand for dowry and cruelty upon the informant by the accused but the independent witness did not support the prosecution case. The evidence of the highly witnesses cannot be accepted without the support of independent witnesses.

Thus, it appears that the prosecution has failed to prove the charges against the accused. Considering the matter in entirety, I am constrained to hold that the accused deserves to get the benefit of doubt and is accordingly, acquitted.

ORDER

14. In view of the above discussions, I am of the considered opinion that, prosecution has failed to establish the case against accused namely Md. Hobibur Rahman Accordingly, accused Md. Hobibur Rahman is acquitted of the charge u/s 498(A) IPC levelled against him in this instant case.

15. Set the accused at liberty forthwith.

16. The bail bond for the accused is extended for a further period of six (6) months.

17. The case is disposed of on contest accordingly.

Given under my hand and seal on this 28th day of April 2021 at North Lakhimpur, Lakhimpur.

(Ms. Sparsita Garg)
Judicial Magistrate First Class
Lakhimpur, North Lakhimpu

GR CASE NO. 1046/2013

A P P E N D I X

A. WITNESS OF PROSECUTION:

1. **P.W-1** : Musst. Mofida Begum
2. **P.W-2** : Md. Samed Ali
3. **P.W-3** : Musst. Kulsum @ Kursan Bibi
4. **P.W-4** : Md. Abdul Kadir
5. **P.W-5** : Md. Jubed Ali
6. **P.W-6** : Sri Bhugendra Pagag

B. EXHIBITS OF PROSECUTION:

1. **Exhibit 1** : Sketch Map
2. **Exhibit 1(1)** : Signature of P.W-6 in the Sketch Map
3. **Exhibit 2** : Chargesheet
4. **Exhibit 4(1)** : Signature of S.I., Hiranya Pator, which is identified by P.W-6.

C. WITNESS OF DEFENSE: NIL

D. EXHIBITS OF DEFENSE: NIL

(Ms. Sparsita Garg)
Judicial Magistrate First Class
Lakhimpur, North Lakhimpur