

**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. 173/2016**

Under section 498-A of the Indian Penal Code

**State of Assam**

**-Vs-**

**Sri Diganta Borah**

..... Accused

Date of framing charge : 01.02.2016  
Dates of recording evidence : 14.08.2018, 14.12.2018,  
29.03.2019, 29.06.2019  
Date of examination u/s 313, Cr.P.C. : 02.09.2019  
Date of argument : 05.11.20120  
Date of judgment : **07.11.2020**

**Advocates appeared in the case:-**

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

Sri Dambaru Bhuyan, Advocate, for the accused

**J U D G M E N T**

1. The brief matrix of the prosecution case is that one Smti. Jaan Phukan Borah had lodged an ejahar before the Officer-in-charge of Panigaon Police Station on 18.01.2016 alleging inter alia that her husband Sri Diganta Borah along with her mother-in-law Smti. Konmai Borah had subjected her to physical and mental atrocities time to time demanding dowry from her and on 09.12.2015 they even caused miscarriage to her but however she had borne all those

atrocities silently. However the atrocities on her remained unabated and later on 17.01.2016 at about 5:30 PM her husband and her mother-in-law had tried to kill her by strangulating her neck over a quarrel on the matter of demand of dowry. Hence, the case.

2. On receipt of the ejahar, the Officer-in-charge of Panigaon Police Station registered a case vide Panigaon P.S. Case No. 8/2016 under section 498-A/313/34 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 of the Indian Penal Code against the accused Sri Diganta Borah only to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence under section 498-A 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 6 (six) witnesses viz. Smti. Jaan Phukan Borah as PW-1, Sri Simanta Borah as PW-2, Sri Chandra Kamal Borah as PW-3, Smti. Aimoni Phukan as PW-4, Sri Gopal Krishan Borah as PW-5 and ASI Jitendra Borah, the I/O as PW-6. The prosecution had exhibited the ejahar as Ext-1 and the signatures of the informant (PW-1) therein as Ext-1(1), the statement u/s 164 Cr.P.C of the victim Smti. Jaan Phukan Borah as Ext-2 and her signatures therein as Ext-2(1) and Ext-2(2), the rough sketch map of

the place of occurrence as Ext-3 and the signature of the I/O therein as Ext-3(1), the charge-sheet as Ext-4 and the signature of the I/O therein as Ext-4(1). The defence side had 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 being the husband of informant-cum-victim Smti. Jaan Phukan Borah had subjected her to cruelty by committing physical and mental tortures on her in pursuance of demand of dowry thereby 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. PW-1 Smti. Jaan Phukan Borah in her evidence deposed that she was married to the accused on 11.03.2015 as per Hindu rites and thereafter had been staying in the house of her accused-husband leading a conjugal life there. Her initial 15 days of matrimonial life was peaceful but thereafter her accused-husband and her mother-in-law Smti. Konmai Borah started demanding money from her for purchasing land and motorcycle. Initially they had asked her to bring a sum of Rs. 50,000/- from her parents but she did not comply and

for that reason the accused and her mother-in-law started physical and mental tortures on her. They used to hit her with whatever object they had in their hands and also used to rebuke her by uttering filthy language. She stated that her mother-in-law used to spit on her face and they did not even provide her food. However, she bearing all the atrocities continued to live in the house of her husband for about 10 months bearing all those tortures. In the meantime, she had attained the pregnancy of 3 months but her accused-husband and her mother-in-law did not like her getting pregnant and they made her to work more and more denying her any rest. She ultimately fell ill and was taken to the doctor and her pregnancy got terminated in a Nursing Home.

9. PW-1 further stated that on 17.01.2016, at about 5:30 PM her accused-husband and her mother-in-law had physically assaulted her inside the house. Thereafter her mother-in-law pressed her neck for killing her and her husband was holding her. She somehow escaped from their clutches and ran out of the house towards the road and took shelter in the house of a neighbouring person where she stayed for that night and on the following morning she lodged the ejahar in the Panigaon Police Station. The police had taken her for medical examination. She thereafter had been residing in her parents' house and the accused never cared to inquire about her.

10. PW-1 in her cross-examination stated that she did not submit before the police any medical paper regarding her abortion. She in her cross-examination denied the suggestions of the defence side that she never became pregnant and that her pregnancy was never aborted. She further stated in her evidence under section 165 of the Indian Evidence Act i.e. the question put to her by Court that she had left the house of her accused-husband in the evening of 16.01.2016 and had lodged the ejahar at the police station on 17.01.2016.

11. Now next let us take up the evidence of PW-4 Smti. Aimoni Phukan who is the mother of the PW-1. She in her evidence deposed that her daughter was married to the accused about 5 years back and her daughter lived with the accused as husband and wife for about 9 months. She stated that the accused and his mother used to torture her daughter and assault her demanding money as dowry almost in every month. She stated that the police of Panigaon Police Station one day had called her to the police station and when she reached there she saw injuries in neck and buttock of her daughter i.e. the informant.

12. PW-4 further stated that the police got the informant medically checkup and that her daughter i.e. the informant did not tell her about the demand made by accused and her mother-in-law and she borne all the tortures and in the police station she had told her about those demands. She further stated that her daughter is now studying in Chennai and she is not willing to live with the accused. She also stated that her daughter had conceived but the accused got it aborted while she was 3 months gestation period.

13. PW-4 in her cross-examination stated that it was in the police station for the first time that the informant had told her about the atrocities committed by the accused persons to her and regarding the demand of dowry. She in her cross-examination further stated that since her daughter had miscarriage so as per advice of the doctor the fetus was removed in presence of her son and daughter-in-law. She also stated in her cross-examination that she does not know whether the accused had indeed assaulted her daughter for demand of dowry or not.

14. So from the evidence of the informant and her mother it can be seen that though the PW-1 stated that she had been tortured by

the accused and her mother-in-law for a long period but it is surprising that she never informed about the said facts to her parents. The PW-4 i.e. her mother in her cross-examination had stated that she also could not say that whether the accused had indeed assaulted the informant i.e. PW-1 or not for the demand of dowry. It can be seen that she came to know about such major incident only at the police station. So it is very queer that the informant (PW-1) if had really been subjected to such great torture on demand of dowry why she did not inform about the matter to her parents. So in the given position it is very important to have a look at the evidence of the other PWs that what they deposed in their evidence.

15. Now PW-2 Sri Simanta Borah who is a co-villager testified that the informant used to live with the accused in his house for about 2/3 years and he could come to know that the informant had left the house of the accused and went to her parental house but he does not know what had happened between them and that why the informant left the house of the accused.

16. PW-2 in his cross-examination stated that he did not hear any quarrel between the informant and the accused from the house of the accused and that he was not aware that why the informant had left the house of the accused.

17. Now the other witness i.e. PW-3 Sri Chandra Kamal Borah who is also a villager testified that the informant was married to the accused about 3/4 years back and after marriage they had been staying together as husband and wife in the house of the accused but after a year of the marriage he could come to know that the informant had left the house of the accused and went to her mother's house and since that day the informant had not been living in the

house of the accused. He further stated that he does not know why the informant had left the house of the accused and one day saw the police coming to the house of the accused. He as such went to enquire that why the police had come to their house and then he could come to know from the mother of the accused that on the previous night the informant had fled away from their house.

18. PW-3 in his cross-examination stated that his house is near to the house of the accused and during the stay of the informant in the house of the accused he had never heard any quarrel taking place in the house of the accused and he also not heard from anybody else about any quarrel between the accused and the informant. PW-3 in her cross-examination further stated that he does not know the reason of the informant leaving the house of the accused.

19. Another witness i.e. PW-5 Sri Gopal Krishna Borah testified that the accused is his related nephew and that the informant was married to the accused and led a conjugal life with the accused for about 3 years but at present the informant is not staying with the accused. PW-5 further stated that he heard about the informant Smti. Jaan Phukan Borh remaining always busy with her mobile phone and relentlessly talking over mobile phone which was not accepted as a good behaviour in their village and society and this habit of her became the point of discordant with her husband. He further stated that he also heard about the informant talking to someone else over mobile phone even at dead hours of night and that she left her matrimonial home and took shelter in somebody's house.

20. PW-5 in his cross-examination stated that being the neighbour of both the informant and the accused he did not hear any quarrel between them.

21. So from the evidence of the PW-2, PW-3 and PW-5 it can be seen that they did not support the version of PW-1 about the accused committing the tortures of her and did not state anything about the accused demanding dowry from the PW-1. They in fact stated that the accused and the informant were there neighbours and they never heard of any such quarrel taking place in their house. The PW-5 in his evidence in fact stated that the cause of discordant between the informant and the accused-husband was the fact that the informant always used to remain busy in her mobile phone which is not an accepted behaviour in his society and she used to speak in the dead hours of night with somebody which did not go well down with her husband.

22. So to sum up it can be said that PW-2, PW-3 and PW-5 did not support the version of PW-1.

23. Now PW-6, the I/O, ASI Jitendra Borah stated about conducting the investigation of this case as I/O. He stated about recording of the statements of the informant and other witnesses and that on conclusion of the investigation he submitted charge-sheet under section 498-A, IPC against the accused Sri Diganta Borah.

24. PW-6, the I/O, in his cross-examination stated that the occurrence took place on 17.01.2016 but the ejahar was lodged on 18.01.2016 and there is no mention regarding the cause of delay in lodging the ejahar and that the distance between the place of the occurrence and the police station was about 1½ kilometers.

25. PW-6, the I/O in his cross-examination stated that PW-1 did not state before him in her statement under section 161, Cr.P.C that the accused and his mother used to torture her physically and mentally on demands of motorcycle and land as dowry from her and that the accused and his mother had tortured her demanding Rs. 50,000/- as



dowry and that the PW-1 did not ask her parents for the said money as she did not want to make them unhappy and moreover their financial condition was not good.

26. PW-6, the I/O further stated in his cross-examination that the PW-1 did not state before him in her statement under section 161, Cr.P.C that the accused used to assault her with whatever articles he used to have in his hand and that both the accused and her mother-in-law used to rebuke her by uttering filthy language and that her mother-in-law used to spit on her face and that her husband and her mother-in-law did not provide her food and did not allow her to take bath in the bathroom for which she had to take bath in between the bushes at the backside of their house and that her mother-in-law used to keep the door of her room shut from inside and did not allow her to enter inside the room.

27. PW-6, the I/O further in his cross-examination stated that the PW-1 did not state before him in her statement under section 161, Cr.P.C that she got three months pregnancy and her husband and her mother-in-law did not like the fact of her getting pregnancy and made her to work heavily. He further stated that the PW-1 did not state before him in her statement under section 161, Cr.P.C that her mother-in-law pressed her neck for killing her and the accused-husband hold her and she somehow got rid of them and ran outside the house towards the road.

28. PW-6, the I/O in his cross-examination further stated that the informant/victim did not submit any medical paper to him concerning her injuries.

29. So again from the evidence of the I/O it can be seen that the PW-1 did not state before the I/O in her statement under section 161, Cr.P.C whatever she had deposed in her evidence-in-chief. Even a look

at the Ext-1 i.e. the ejahar goes to show that the PW-1 in her said ejahar had generally mentioned about the accused persons committing tortures on her demanding dowry but did not state anything in details there. Though it is obvious that an ejahar is not required to be an encyclopedia and it is not necessary that the informant is required to fill-in every details there but however while she gave her statement before the I/O under section 161, Cr.P.C it is expected that she will state the said facts before the police regarding the tortures and the details of the offence committed upon her but from the evidence of PW-6 i.e. the I/O it can be seen that the PW-1 did not state all those facts which she had deposed in her evidence-in-chief as PW-1 in the Court before the I/O in her statement under section 161, Cr.P.C. Also, the PW-1 failed to adduce any medical document regarding her allegation that the accused and his family members got her aborted. Further, the PW-1 stated that she had sustained injuries in her neck the PW-4 stated that she saw injuries in the neck and buttock of her daughter but the prosecution failed to examine the Medical Officer in that regard. Also, a perusal of the injury report which is there in the case record goes to show that no injury was detected on the body of the informant. In the given position when the PW-2, PW-3 and PW-5 have not supported the version of PW-1 and when indeed the PW-5 contradicted the version of PW-1 by saying that the reason for dispute between the informant and the accused being the fact that the informant used to remain always busy with her mobile phone goes to create doubt in the prosecution story. Also, there is no medical evidence to suggest that the informant was subjected to physical torture.

30. In the given position it can be no way concluded that the accused had subjected the informant to physical and mental torture demanding dowry from her or that he had posed a threat to the life and limb of the informant.

31. So, the aforesaid point of determination is held in negative.

32. In the result, 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 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 7<sup>th</sup> day of November, 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. Jaan Phukan Borah (PW-1)  
Sri Simanta Borah ( PW-2)  
Sri Chandra Kamal Borah (PW-3)  
Smti. Aimoni Phukan (PW-4)  
Sri Gopal Krishna Borah (PW-5)  
ASI Jitendra Borah, the I/O (PW-6)

**PROSECUTION EXHIBIT**

Ejahaar (Ext-1)  
Signature of the informant [Ext-1(1)]  
Statement of the informant recorded u/s 164, Cr.P.C  
Signatures of the informant [Ext-2(1) and Ext-2(2)]  
Rough sketch map of the place of occurrence (Ext-3)  
Signature of the I/O [Ext-3(1)]  
Charge-sheet as Ext-4  
Signature of the I/O [Ext-4(1)]

**WITNESSES AND EXHIBITS FROM THE DEFENCE SIDE**

Nil

**WITNESSES AND EXHIBITS FROM THE COURT SIDE**

Nil

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