

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE,
LAKHIMPUR,
NORTH LAKHIMPUR, ASSAM**

Present: Shri Narayan Kuri, AJS,
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur, Assam

G.R. 2546/2014

U/s 498A IPC

State of Assam

-Vs-

Md. Nur Mahammad

S/O: Md. Aktar Ali

R/O: Pandhowa

P/S: North Lakhimpur

District: Lakhimpur, Assam

.....Accused person

Date of framing charge : 06.06.2015
Dates of recording evidence of PWs : 14.07.2015, 22.06.2016,
09.03.2017
Statement u/s 313, Cr.P.C. recorded on : 18.04.2017
Date of recording evidence of DW : 26.12.2017
Date of argument : 20.03.2019
Date of judgment : **03.04.2019**

Advocates appeared in the case:-

Sri Prasanta Dutta, Addl. P.P., for the State

Smti. Minakhi Dutta Gohain Baruah, Advocate, for the accused person

J U D G M E N T

1. This case has arisen out of an Application filed on 20.12.2014 by informant Md. Akkash Ali before the learned Additional District Magistrate, Lakhimpur. It is alleged in the ejahar that accused Md. Nur Mahammad married his daughter, namely, Musstt. Aklima Khatun and after six months of the marriage on being instigated by accused persons Musstt. Meherun Nessa and Md. Aktor Ali, accused Md. Nur

Mahammad started torturing Musstt. Aklima Begum physical and mentally on demand of Godrej, sofa-set, show-case, gas, cooker and cash amount of Rs. 50,000/- (rupees fifty thousand). It is further alleged that while the daughter of the informant was nine months pregnant the accused persons assaulted her on demands of dowry for which she became ill and the accused persons did not provide her any medical treatment and also did not allow her to go to her parental house. On 19.12.2014 the wife of the informant and his elder daughter had gone to the house of the accused persons and at that time in their presence the accused persons assaulted Musstt. Aklima Khatun on demand of dowry articles causing grievous injury to her. Hence, the case.

2. The learned Additional District Magistrate, Lakhimpur, on receipt of the Ejahar, forwarded the same to the Officer-in-charge, North Lakhimpur Police Station to take necessary action. After receiving the Ejahar, the Officer-in-charge, North Lakhimpur Police Station, registered a case being North Lakhimpur Police Station Case No. 1377/2014 u/s 498A/34, IPC R/W Section 4 of the Dowry (Prohibition) Act and got the investigation into the case commenced. The investigating officer, after completing the investigation, submitted charge-sheet u/s 498A, IPC R/W Section 3/4 of the Dowry (Prohibition) Act against accused person Md. Nur Mahammad to stand trial in the Court. Accused persons Musstt. Meherun Nessa and Md. Aktor Ali were not sent up for trial.

3. On receipt of the charge-sheet, cognizance of the offences u/s 498A, IPC R/W Section 3/4 of the Dowry (Prohibition) Act were taken as per section 190(1)(b), Cr.P.C. Necessary copies were furnished to the accused person as per section 207, Cr.P.C. after his appearance before the Court. After considering the materials on record and hearing both the sides, charges u/s 498A, IPC was framed in writing against the accused person. The charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

Point for determination

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

Whether the accused being the husband of victim Musstt. Aklima Khatun, at village Pandhowa, under North Lakhimpur Police Station, since after six months of her marriage subjected her to cruelty by torturing her physically as well as mentally on demand of dowry articles and cash amount of Rs. 50,000/- (rupees fifty thousand) causing grievous injury to her, and thereby committed an offence punishable u/s 498A, IPC ?

5. During the trial, the prosecution has examined as many as 7 (seven) witnesses, namely, Musstt. Aklima Khatun (PW-1), Md. Akkash Ali (PW-2), Musstt. Farida Khatun (PW-3), Musstt. Monowara Begum (PW-4), Md. Abdul Hasim (PW-5), Md. Abed Ali (PW-6) and SI Indreswar Gogoi (PW-7). Learned Addl. P.P. submitted that he does not want to examine the other I.O. S.I. Muhidhar Taye and accordingly, the prosecution evidence was closed. After the closure of the prosecution evidence the accused person was examined under section 313, Cr.P.C. wherein he denied the incriminating materials put to him from the evidence of the witnesses and intended to adduce evidence in his defence and accordingly one Md. Mahammad Ali was examined as DW-1.

6. I have heard the Argument of both sides and thereupon come to the following finding:

DISCUSSION AND DECISION WITH REASONS THEREOF:

7. At the very outset it is essential to have a brief resume of the version of the witnesses in order to marshal the evidence in right perspective in tandem with the points for discussion.

8. PW-1 Musstt. Aklima Khatun, is the victim in this case, who has deposed that after her marriage in the month of January 2014 the accused along with his father and mother tortured her during her pregnancy on demand of Godrej, sofa-set, gas, cooker as dowry from her. She further deposed that her mother and sister came to her house when she was seven months pregnant and at that time she reported them about the tortures meted to her but her husband assaulted her in front of them. In her cross-examination, she has stated that the distance between her parental house and the house of the accused is about 1½ kilometers. According to her the accused persons started torturing her after four months of her marriage. She gave normal birth of her child. She has not submitted any document showing injury on her person due to assault. She had not written the ejahar. She admitted to have not given the dowry articles and Rs. 50,000/- as demanded by the accused persons.

9. PW-2 Md. Akkash Ali is the informant of this case and also the father of the victim girl Aklima Khatun. According to him, the accused along with his father and mother tortured Aklima Khatun demanding money and other items such as gas, cylinder, sofa-set etc. Her daughter was ill when her mother and sister went to visit her but the accused persons subjected her to assault in front of them. He further deposed that when his wife showed her intention to do treatment of his daughter, the accused did not allow and when his daughter wanted to come the accused assaulted her with bamboo stick. Thereafter, he lodged an Ejahar (Ext-2) before the learned Executive Magistrate. In his cross-examination, he has stated that the distance between his house and the house of the accused will be about 2 kilometers. After the marriage of his daughter he had visited the house of the accused. He had not seen the occurrence. The ejahar was written by one Habibur Rahman. He cannot say what is written in the ejahar.

10. PW-3 Musstt. Farida Khatun, PW-4 Musstt. Monowara Begum, PW-5 Md. Abdul Hasim and PW-6 Md. Abed Ali expressed their ignorance about the occurrence.

11. PW-7 SI Indreswar Gogoi deposed that during investigation, he examined informant Akkash Ali along with two other witnesses at the Police Outpost and recorded their statements, he visited the place of occurrence and inspected the same and prepared a sketch map of the place of occurrence and examined the witnesses found at and around the place of occurrence and recorded their statements. He further deposed that after doing this much of investigation on his transfer he handed over the Case Diary to the I/C SI Muhidhar Teye of Nowboicha Police Outpost who conducted the remaining investigation into this case and submitted charge sheet under section 498A IPC R/W section 3/4 of the Dowry (Prohibition) Act against accused Md. Nur Mahammad. He exhibited Ext-3 sketch map of the place of occurrence and Ext-4 charge sheet. In his cross-examination, he has stated that he had done the preliminary investigation of this case and recorded statements u/s 161, Cr.P.C. of four witnesses and he had also prepared the sketch map in this case.

12. DW-1 Md. Mahammad Ali, Gaonburah of the village of accused, has deposed that some fighting had taken place between the accused and his wife and so his wife stayed in the house of her father for about two years. But his wife again returned to the house of the accused and at present she has been staying with the accused for about six months peacefully with their 2 or 3 years old son. In his cross-examination, he has expressed his ignorance if the accused used to demand money and property from the house of the parents of his wife and tortured his wife in that connection.

13. In the decision of published in **AIR 2002 Supreme Court 2078** under title **Girdhar Shankar Tawade Vs. State of Maharashtra**, the Hon'ble Supreme Court has luculently held that "3. The basic purport of the statutory provision is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto..... Two specific instances have been taken note of in order to ascribe a meaning to the word 'cruelty' as is expressed by the legislatures: Whereas explanation (a) involves three specific situations

viz (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of cruelty in terms of section 498-A”.

14. In **Manjuram Kalita Vs. The State of Assam (2010)2 GLT (SC) 27** the Hon’ble Supreme Court of India has held as follows “22. “Cruelty” for the purpose of section 498-A IPC is to be established in the context of section 498-A IPC as it may be a different from other statutory provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as “cruelty” to attract the provisions of section 498-A of the IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty.

15. Similar view was taken by the Hon’ble Supreme Court in **State of Andhra Pradesh Vs. M. Madhusudhan Rao (2008) 15 SCC 582** by holding “18..... The definition stipulates that the harassment has to be with a definite object of coercing the woman or any person related to her to meet an unlawful demand. In other words, for the purpose of section 498-A IPC, harassment simpliciter is not cruelty and it is only harassment is committed for the purpose of coercing a woman or any other person related to her to meet an unlawful demand for property etc., that it amounts to cruelty punishable under section 498-A”.

16. From the analysis of the above three decisions of the Hon’ble Apex Court, it has elicited that petty quarrels do not come under the

purview of the section 498-A IPC; the physical torture must be grave and the mental harassment must be equally heinous to match the physical injury; the cruelty must be continuous, persistent or at least in close proximity of time of lodging the complaint; and the purpose of the harassment is committed for the purpose of coercing the woman or any other person related to her to meet an unlawful demand for property. With these standard norms, let's see whether the factual scores backs this norms.

17. Thus, it is quite apparent from the evidence on record that except victim Aklima Khatun and her father Md. Akkas Ali no other witnesses have supported the prosecution case. PW-1 victim Mustt Aklema Khatun who has deposed that after her marriage in the month of January 2014 the accused along with his father and mother tortured her during her pregnancy on demand of Godrej, sofa-set, gas, cooker as dowry from her. She further deposed that her mother and sister came to her house when she was seven months pregnant and at that time she reported them about the tortures meted to her but her husband assaulted her in front of them. But she has not submitted any document showing injury on her person due to assault. She has admitted to have not given the dowry articles and Rs. 50,000/- as demanded by the accused persons. Her father PW-2 Md. Akkash Ali, although stated that the accused demanded money and other household articles but has not specified how much money he demanded. He has corroborated the fact that her daughter was assaulted when his wife and elder daughter went to see her because of her illness. But the I/O has not medically examined the victim. Thus, it has established that the prosecution has failed to prove grave injury to the victim. There is no corroborative evidence to show that any monetary demand was met. While victim has stated that the accused made a demand of Rs. 50000/-, her father did not utter a single word about this monetary demand. However, there is a corroboration to the effect that one day victim Aklima Khatun was beaten up in front of her mother and sister, but these two material witnesses have not been adduced by the prosecution. It has rather come out in evidence that at

present the accused and the victim are staying peacefully. Considering all these facts and evidence I am of the reasonable opinion that the prosecution has failed to establish the prosecution case beyond all reasonable doubt as per the criteria fixed by the decision of the Hon'ble Supreme Court of India.

ORDER

18. In view of the above discussion, I have no hesitation in holding that the prosecution has failed to bring home the charge u/s 498A, IPC against the accused person. As such, the point for determination is decided against the prosecution. Accused person Md. Nur Mahammad is acquitted of the charge under section 498A IPC and as such he is set at liberty forthwith. The bail bond of the accused person stands cancelled and surety stands discharged.

19. Given under my hand and the seal of this Court on this the 3rd day of April, 2019

(Shri Narayan Kuri)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Dictated and Corrected by me:

(Shri Narayan Kuri)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Transcribed and typed by me:
Narayan Chetri, Stenographer

A P P E N D I X

WITNESSES FROM THE PROSECUTION SIDE

Musstt. Aklima Khatun (PW-1),
Md. Akkash Ali (PW-2),
Musstt. Farida Khatun (PW-3),
Musstt. Monowara Begum (PW-4),
Md. Abdul Hasim (PW-5),
Md. Abed Ali (PW-6)
SI Indreswar Gogoi (PW-7)

PROSECUTION EXHIBIT

Statement u/s 164, Cr.P.C. of PW-1 (Ext-1)
Ejhar (Ext-2)
Sketch map (Ext-3)
Charge sheet (Ext-4)

WITNESSES FROM THE DEFENCE SIDE

Md. Mahammad Ali (DW-1)

DEFENCE EXHIBIT

Nil

(Shri Narayan Kuri)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur