

**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. 2210/2016

Under section 498-A of the Indian Penal Code

State of Assam

-Vs-

Sri Sailen Phukan

S/O: Sri Bhugeswar Phukan

R/O: Bholabari Amguri Tiniali

P/S: Narayanpur

District: Lakhimpur, Assam

..... Accused person

Date of framing charge	: 04.04.2017
Dates of recording evidence of PWs	: 12.04.2018, 30.11.2018, 28.05.2019, 22.07.2019
Statement u/s 313, Cr.P.C. recorded on	: 23.10.2019
Date of argument	: 20.11.2019
Date of judgment	: <u>03.12.2019</u>

Advocates appeared in the case:-

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

Mr. Arup Borah, Advocate, for the accused person

J U D G M E N T

1. This case has arisen from an ejahar lodged on 28.08.2016 by informant Smti. Sunita Gogoi with the Officer-in-Charge of Narayanpur Police Station. It is alleged in the ejahar that informant Smti. Sunita Gogoi had love affairs with accused Sri Sailen Phukan and as such on the advice of his younger sister (i.e. accused Smti. Jun Phukan) and his parents (i.e. accused persons Sri Bhogeswar Phukan and Smti. Dhaneswari Phukan) the marriage between them was solemnized in the month of 'Bohag' (April-May) 2016 as per social customs and rites. After one month of her marriage the accused persons tortured her

physically and mentally on demand of dowry. Being unable to bear the tortures meted out to her by the accused persons, she left her matrimonial home in the month of July in that year and took shelter in her parents house. Thereafter, while she was staying in her parent's house, the accused persons made phone call to her threatening her to set her ablaze and hang her body. Hence, the case.

2. After receiving the ejahar, the Officer-in-charge of Narayanpur Police Station, registered a case vide Narayanpur PS Case No. 150/2016 under section 498-A 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 accused person Sri Sainen Phukan to stand trial in the Court. The other FIR-named accused persons Sri Dhaneswari Phukan, Smti. Jun Phukan and Sri Bhogeswar Phukan were not sent up for trial.

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 person 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 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:

(i) Whether the accused person being the husband of informant-cum-victim Smti. Sunita Gogoi since after one month of the marriage which was solemnized in the month of 'Bohag' (April-May) 2016, at village Bholabori Amguri Tiniali, under Narayanpur Police Station,

subjected her to cruelty by torturing her physically as well as mentally on demand of dowry, and subsequently, being unable to bear the torture meted to her, she took shelter in her parents' house, and thereby committed an offence punishable under section 498-A of the Indian Penal Code?

5. During the trial, the prosecution examined as many as 5 (five) witnesses, namely, Smti. Sunita Gogoi (PW-1), Smti. Sangita Gogoi (PW-2), Sri Akan Phukan (PW-3), Sri Sarbeswar Baruah (PW-4), ASI Bolindra Baruah (PW-5) and exhibited 3 (three) documents (Shown in the Annexure appended below). After the closure of the prosecution evidence the accused person was examined under section 313 of the Code of Criminal Procedure wherein he denied the incriminating materials put to him from the evidence of the witnesses and declined to adduce evidence in his defence.

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

DISCUSSION, DECISION AND 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 point for discussion.

8. PW-1 Smti. Sunita Gogoi, informant-cum-victim, has stated that the accused is her husband and for the initial three months after the marriage their conjugal life was going well and thereafter the accused along with his mother, father and sister Jun Phukan assaulted her on demand of dowry and sent her to her father's house to bring Rs. 1,00,000/- or Rs. 2,00,000/- in order to purchase motorcycle but her father could not provide her with said amount as he is a poor person and thereafter, the accused along with his parents and sister increased the torture upon her by assaulting her. She has further stated that at the time of her marriage her father could not provide furniture to her and taking cue to this inability of her father, the accused along with

his parents and sister assaulted her and one day his sister Jun Phukan burnt down her clothes and his mother poured water in her person while she was asleep. She has further stated that the accused and his parents and sister had attempted several times to set her ablaze by pouring kerosene oil on her, that the accused and his parents and sister after repeated physical assault had left her in her father's house and had again took her back from her father's house and thereby assaulted her 4-5 times. She has further stated that the accused and his parents and sister used to suspect her when she received phone calls from her parents house and assaulted her and also questioned her as to who had made the phone-calls; that she was not provided with food and kept her outside the house day and night; that the accused used to suspect with her own father and on this matter the accused had threatened to hang her if she maintained such relation. She has further stated that on being assaulted she sustained injuries in the cheek and got herself examined by doctor; and that she bore the tortures in that manner for around two months and thereafter she returned to her father's house and lodged an ejahar and since then she had been staying in her father's house and the accused did not take any information about her. In her cross-examination, she has stated that she did not want to return to her husband's house and also was under no expectation that her husband would come and take her back. She admitted that her marriage was solemnized with the accused in the month of Bohag in the year 2016 but she returned to her parent's house in the month of July on that year and as such stayed in the house of her husband for 3 (three) months. She clarified to have lodged the ejahar on 28.08.2016 i.e. after two months from the date of her returning to her parent's house from her husband's house. She has acknowledged to have not mention the reason for two months delay in lodging the ejahar. She has also accepted the fact to have not mentioned that the accused sent her to the house of her father demanding her to bring a motorcycle and an amount of Rs. 1,00,000/- or Rs. 2,00,000/-. According to her, she did not return to the house of her mother from her husband's house after staying there for three

months. She did not submit the medical document of her treatment to the Investigating Officer. She however admitted that subsequent to her leaving her matrimonial house, her husband, his parents and younger sister accompanied her to her mother house and her mother treated them and allowed them to go after providing breakfast to them. According to her, near the house of accused, the house of his elder sister and one uncle is situated but she did not know their names. She has stated that her marriage was solemnized after due observance of rituals like "Hom" "Yajna" in presence of Priest. According to her after leaving her in the house of her mother, the accused never enquired about her. She informed her parent that the accused had demanded a motorcycle and amount of Rs. 1,00,000/- or Rs. 2,00,000/- from her and that the accused person also demanded furniture, and tried to set her ablaze by pouring kerosene oil on her body.

9. PW-2 Smti. Sangita Gogoi, mother of the informant-cum-victim, has stated that the accused after his marriage with her daughter Sunita Gogoi stayed together with her for about 2-3 months and thereafter the accused and his family members demanded dowry from her daughter. The accused and his family members demanded Godrej, Sofa, A.C and bed from her daughter and the accused and his family members tortured her daughter in that connection and because of their poor economic condition they could not fulfill the demanded items of the accused. He has further stated that after about 2 months of the marriage, her daughter had told her over phone about the tortures meted out to her on demand of dowry. She had gone to her daughter's house and advised her daughter and the accused to stay together peacefully. After 10-15 days thereafter, the accused and his family members again started torturing her daughter and as the torture of her daughter increased, her daughter came from the house of the accused to their house. After coming to their house, her daughter lodged the case at the police station and for last 1½ years her daughter has been staying with them. In her cross-examination, she has stated that her daughter was married to the accused in the month of September,

2016. But could not remember in which month her daughter had come back to their house, but according to her it was during the summer season. Her daughter stayed in the house of the accused for three months. They had performed the marriage of her daughter with the accused by inviting people in their house and arranging a dinner but they did not perform any 'Hom' ceremony. No rituals/ceremonies of the Hindu religion were performed for the marriage ceremony. The accused, his parents and his sister, all of them, had come to leave her daughter to their house and on that day, they had sent them after treating them with lunch. During her stay in the house of the accused for three months, her daughter did not come to their house in between. After visiting the house of the accused on receipt of phone-call from her daughter, she had advised her daughter as well as the accused to live peacefully together and except this advise she did not give any other advice to them. When her daughter informed her over phone that she was being tortured on demand of dowry, she had not lodged any case at the police station. About two months after her daughter had come to their house, she lodged the case at the police station. Three days after living her daughter their house, the accused had come to their house to take back her daughter, but her daughter refused to go with him. She admitted that the accused had lodged a case at Simaluguri Police Outpost after her daughter had refused to go back with him and the police had called her daughter to the said police outpost. After filing the case against her daughter, the accused never enquired of her daughter. As the accused had lodged a case against her daughter, so her daughter also lodged a case against the accused.

10. PW-3 Sri Akan Phukan, an independent witness, has stated that after the marriage the accused and the informant lived together for about 5-6 months and thereafter the informant left the house of the accused. The learned defence counsel declined to cross-examine the said witness.

11. PW-4 Sri Sarbeswar Baruah, an independent witness, has stated that after the marriage for about 2 months the accused and the

informant lived together and thereafter, he heard that fighting took place between the accused and the informant in connection with mobile phone call and that the informant left the house of the accused. In his cross-examination, he has stated that he had not heard about demand of dowry by the accused from the informant. At the night time the informant used to make phone call to somewhere and he told her not to do so. No fighting took place between the informant and the accused, only an altercation took place between them. The informant did not tell him that the accused demanded dowry from her.

12. PW-5 ASI Bolindara Boruah, Investigating Officer, has stated that during the course of investigation, he examined informant Smti. Sunita Gogoi and her parents at the police station and recorded their statements, proceeded to the place of the occurrence and drew a sketch map of the place of the occurrence and examined the witnesses found at and around the place of the occurrence, issued notice against the accused under section 41 of the Code of Criminal Procedure, and on completion of preliminary investigation, he handed over the case diary to the Officer-in-Charge of Narayanpur Police Station and thereafter SI Subash Ch. Doley submitted charge-sheet against the accused under section 498-A of the Indian Penal Code. Ext-2 is the sketch-map of the place of the occurrence and Ext-3 is the charge-sheet. In his cross-examination, he has stated that in the ejahar there is no mention of date and time of the occurrence. As per ejahar it is alleged that the occurrence took place on 16.07.2016 but the ejahar was filed on 28.08.2016. There is no mention of cause of delay in the ejahar. According to the I/O, witness Sunita Gogoi did not tell him that the accused demanded one or two lakh rupees for purchasing a motorcycle from her father; that since her father could not meet up the demand as such the physical tortured had been increased; that since her father could not give furniture in her marriage and taking cue of this inability of her parent, the accused used to assault her; that the sister of accused had burnt down her clothes and mother of accused had poured water on her person while she was asleep; that they had

attempted several times to set her ablaze by pouring kerosene oil on her; that they after repeated physical assault had left her in her parents house; that the accused persons had again took her back from her parents house and thereby assaulted her 4-5 times; they used to suspect her when she received phone from her parents house and assaulted her and also questioned her who had made the phone-calls; that she was not provided with food and kept her outside the house day and night; that her husband used to suspect with her own father and on this matter accused had threatened to hang her if she maintained such relation; that one day on being assaulted she sustained injuries in the cheek and she was examined by the doctor; and that she bore the tortures in that manner for around two months.

13. I/O has further clarified that witness Sangita Gogoi did not tell him that the accused and his family members demanded Godrej, Sofa, A/C and bed and that as their economic condition was not good so they could not provide those demanded articles to the accused person; that her daughter informed her over phone that the accused person and his family members tortured her on demand of dowry; and that after about 10-15 days of her returning from the house of the accused person, the accused and his family members tortured her daughter.

APPRECIATION OF EVIDENCE

14. Let me now get down to the brass tack of the discussion. In the Ext.1 FIR/Ejahaar the specific allegation against the accused was that one month after her marriage with accused, the physical and mental torture had started for dowry demand and eventually in the month of July,2016 she returned to her maternal house. Even after her return, the accused persons persist on threatening to kill her by setting her ablaze and by hanging her. Thus, in the FIR there is no elaboration as to what kind of dowry articles were demanded from informant Smti Sunita Gogoi(PW-1).

15. But in her evidence PW-1 Smti. Sunita Gogoi, informant-cum-victim, has elaborated that accused person and his parent and sister sent her to her father's house to bring cash Rs. 1,00,000/- or Rs. 2,00,000/- in order to purchase motorcycle and because of her inability to do so the torture increased on her. Her further allegation is that at the time of her marriage her father could not provide furniture to her and taking cue to this inability of her father, the accused along with his parents and sister assaulted her and one day his sister Jun Phukan burnt down her clothes and his mother poured water in her person while she was asleep. She has further stated that the accused and his parents and sister had attempted several times to set her ablaze by pouring kerosene oil on her; that the accused and his parents and sister after repeated physical assault had left her in her father's house and had again took her back from her father's house and thereby assaulted her 4-5 times.

16. Thus, if the assertion of victim PW-1 Sunita Gogoi is to be believed than during her three months stay in the matrimonial house, the accused person, his parent and sister sent her to her father's house to bring cash rupees one lakh or two lakh from the house of her father for purchasing motor-cycle etc., and after committing torture had left her in her father's house for some 4 or 5 times. But in her cross-examination, victim has admitted to have not returned to the house of her mother from her husband's house after staying there for three months. This fact has also got the support from the assertion of PW-2 Smti Sangita Gogoi, mother of PW-1 Sunita Gogoi. Thus, when victim did not return to her parent's house during the period of her three months stay in the matrimonial house, in such circumstances her assertion that accused person sent her to her parent's house for 4 or 5 occasions after torturing her is also not believable.

17. Further, as per version of victim PW-1 Sunita Gogoi, accused persons sent her to her father's house to bring rupees one or two lakhs to buy a motor-cycle only and there is no assertion that accused persons demanded any article from the victim or her parent. But

according to mother of victim i.e. PW-2 Sangita Gogoi, the accused person demanded Godrej, Sofa, A/C and bed from her. According to PW-1 Sunita Gogoi her marriage was solemnized by observing all rituals like "Hom" "Yajna" etc., but according to her mother no such religious rites were performed. Victim has testified in evidence that she underwent medical treatment for the torture, but no such medical evidence has been adduced. According to PW-1 after she left her matrimonial house the accused never enquired about her, but PW-2 controverted this point by stating that three days after her leaving the matrimonial house, accused came to take back her but she refused to return with her husband. According to PW-2, as the accused had lodged a case against her daughter, so her daughter also lodged a case against the accused. Thus, there are umpteen contradictions in the version of PW-1 with her mother PW-2 and as such arriving at the conclusion of the guilt of the accused on the basis of the assertion of these two witnesses in my reasonable opinion would not be safe. More so, when both PW-1 Sunita and her mother PW-2 Sangita have admitted that at that time of leaving of matrimonial house by PW-1, her husband, parent-in-law and sister-in-law accompanied her to the house of PW-2 and her mother (PW-2) treated them and allowed them to go after serving meals to them. If the accused person and her parent committed atrocities against their daughter and came to leave her in such a charged atmosphere treating guest with meal is something which is not appear to be convincing proposition.

18. Let me now turn on to the evidence of other witnesses. PW-3 Akan Phukan and PW-4 Sarbeswar Boruah are independent witnesses and according PW-4, victim used to remain busy in mobile phone call throughout the night for which an altercation took place between her and her husband but no physical fight took place. The I/O has also confirmed that the witnesses did not tell the material facts to her at the time of investigation.

19. What has boiled down from the above is that the prosecution has failed to prove any injury in the person of the victim. It has appeared in

evidence that there are many contradiction in the version of PW-1 and PW-2, and there is an unexplained delay of some 1½ month in lodging the FIR and it has admitted by PW-2 that since accused had lodged a case against his wife PW-1 as such PW-1 lodged this case. The omega of the foregoing discussion is that the prosecution has failed to prove any gave physical and mental injury to informant Sunita Gogoi caused by accused and the allegation of dowry demand is also not been based on any concrete proof but on some omnibus statement besot with doubt.

ORDER

20. In view of the above discussion, I hereby hold accused Sri Sailen Phukan not guilty of the offence under section 498-A of the IPC and accordingly he is acquitted of this charge and set at liberty forthwith. The point for determination is also decided in negative against the prosecution accordingly.

21. The bail-bond of Sri Sailen Phukan shall remain valid for a further period of six months.

22. Given under my hand and the seal of this Court on this the 3rd day of December, 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

..... Contd. (Appendix)
Page 11 of 12

A P P E N D I X

WITNESSES FROM THE PROSECUTION SIDE

Smti. Sunita Gogoi (PW-1)
Smti. Sangita Gogoi (PW-2)
Sri Akan Phukan (PW-3)
Sri Sarbeswar Baruah (PW-4)
ASI Bolindra Baruah (PW-5)

PROSECUTION EXHIBIT

Ejhar (Ext-1)
Sketch-map of the P.O. (Ext-2)
Charge-sheet (Ext-3)

WITNESSES FROM THE DEFENCE SIDE

Nil

DEFENCE EXHIBIT

Nil

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