

**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. 1959/2015**

U/s 498-A IPC

**State of Assam**

**-Vs-**

**Md. Abdul Mutaleb**

S/O: Md. Abdul Gofur

R/O: Bilgarh

P/S: North Lakhimpur

District: Lakhimpur, Assam

..... Accused person

Date of framing charge	: 22.12.2016
Dates of recording evidence of PWs	: 08.08.2017, 10.04.2019
Statement u/s 313, Cr.P.C. recorded on	: 30.04.2019
Date of argument	: 04.05.2019
Date of judgment	: <b><u>17.05.2019</u></b>

**Advocates appeared in the case:-**

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

Sri Pankaj Saikia, Advocate, for the accused person

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

1. This case has arisen from an ejahar lodged on 29.09.2015 by informant Musstt. Samsad Begum before the Officer-in-charge of North Lakhimpur Police Station wherein it has alleged that the informant got married with accused Md. Abdul Mutaleb about 18 years ago and a female child was born to them. After completing about 7 years of their marriage, accused Md. Abdul Mutaleb entered into second marriage with accused Musstt. Manik Chan Begum. Thereafter both the accused persons subjected her to cruelty by inflicting physical as well as mental torture on her on demand of an amount of Rs. 50,000/- (rupees fifty thousand) and a bicycle as dowry and threatened to set her on fire by pouring kerosene oil if she could not fulfill the said demands of dowry

and on 13.09.2015 the accused persons physically assaulted her on demand of said dowry money and article and drove her out from her matrimonial house along with her female child and as such she took shelter in her parents house. Hence, the case.

2. The Officer-in-charge, North Lakhimpur Police Station after receiving the ejahar registered a case being North Lakhimpur Police Station Case No. 1020/2015 under section 498-A/34 of the Indian Penal Code 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 under section 498-A of the Indian Penal against accused person Md. Abdul Mutaleb to stand trial in the Court. The other FIR-named accused person Musstt. Manik Chan Begum was not sent up for trial.

3. On receipt of the charge-sheet, cognizance of the offence under section 498-A, IPC was 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, 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.

**POINTS FOR DETERMINATION:**

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

5. Whether the accused person being the husband of the informant/victim Musstt. Samsad Begum since after seven years of the marriage subjected her to cruelty by inflicting physical as well as mental torture on her on demand of an amount of Rs. 50,000/- (rupees fifty thousand) and a bicycle as dowry and subsequently as she could not fulfill the said demands of dowry on 13.09.2015 the accused

physically assaulted her and drove her out from his house along with her female child, and thereby committed an offence punishable under section 498-A of the Indian Penal Code ?

6. During the trial, the prosecution examined as many as 5 (five) witnesses, namely, Musstt. Samsad Begum (PW-1), Md. Aktar Ali Khan (PW-2), Md. Abdul Rahman (PW-3), Md. Joinaluddin (PW-4) and Md. Abdul Matin (PW-5) and exhibited 1 (one) document as shown in the appendix. In the instant case all the material witnesses have been examined. Considering the prayer of the prosecution as well as the defence Counsel, the prosecution evidence was closed without the examination of the Investigating Officer and the Medical Officer. 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 declined to adduce evidence in his defence.

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

**DISCUSSION, DECISION AND REASONS THEREOF:**

8. Before moving forward with the discussion let's peruse evidence of the witnesses making short shrift.

9. PW-1 Musstt. Samsad Begum, informant, has stated that the accused is her husband and they were married in the year 1998 and since then she had been living the house of the accused as his wife. A female child was born to her after eight years of their marriage. Her daughter had suffered illness after the birth but accused refused to take her to the doctor for her medical treatment. On the other hand, the accused used to assault her and used to ask her to bring money from her father's house for her medical treatment. After the birth of her child, she stayed in the house of the accused for about 1½ years. The accused assaulted her with stick in her on her back and other parts of

her body. A stick blow even fell on the leg of her child also for which she called in her father to her house and took her away with him in his house where she stayed for some 7 or 8 years. Thereafter, the villagers amicably settled their differences and she again returned to her husband's house with her child who was reading in Class-V. But after 2/3 days the accused again demanded an amount of Rs. 50,000/- motorcycle, T.V., and other articles from her as dowry. She could not fulfill the said demands of her husband as her father is a poor person for which accused assaulted her. Accused also rebuked her using unparliamentary words and used not to provide her clothes and food. As a result, she stayed in her husband's house this time only for 22 days. Her father again took her back to his house. Thereafter, she lodged this case from the house of her father. Ext-1 is the ejahar, Ext-1(1) and Ext-1(2) are her signatures. Her husband had married another woman during the period of 7/8 years when she was living in the house of her father. In her cross-examination, PW-1 has stated that quarreling/fighting used to take place between her and the second wife of accused namely Manik Chand Begum. Manik Chand Begum had asked her husband to drive her out of his house.

10. PW-2 Md. Aktar Ali Khan, father of the informant, has stated that after marriage with accused Abdul Mutaleb her daughter was living happily and peacefully but after 4 or 5 years after marriage the accused contracted second marriage with another woman and since then, the accused started torturing her daughter. Accused used to assault his daughter and asked her to bring money from her father's house along with motorcycle and T.V. The accused used to say that he would not keep his daughter if he was not given the demanded articles. A female child was born to his daughter. His daughter and granddaughter stayed in his house for 7 or 8 years but during this period accused never enquired of his wife and daughter. Thereafter, because of negotiation by the villagers the accused came with his father and took his daughter back to their house. They kept his daughter in their house for 20/22 days and thereafter he received a phone call from his daughter and asked him to take her back from her matrimonial house.

He along with other four persons went to his daughter's house. After going there he came to know that his daughter was beaten up by the accused who also tried to put fire on her by pouring kerosene oil over her. He also came to know that the accused did not allow his daughter to live in his house and his daughter had to take shelter in the house of others for two nights. On being asked his son-in-law (accused) adamantly told him that he would not keep his daughter with him and for this he brought back his daughter to his house. Thereafter, his daughter lodged this case against the accused. In his cross-examination, PW-2 has stated that the accused had demanded money, motorcycle and T.V. from his daughter earlier also and later also i.e. earlier when she was staying in his house as well as later when she was staying in his house for 20/22 days.

11. PW-3 Md. Abdul Rahman has stated that he knows both the parties. According to him, informant Samsad Begum presently resides in the house of her mother but he does not know the reason for which she has been staying in the house of her mother. He also does not know the reason for which fight took place between both the parties.

12. PW-4 Md. Joinaluddin who knows both informant and accused, has stated some 7 or 8 years back both of them used to live together but at present the informant is staying in the house of her mother. But he does not know the reason for which the informant had gone to her parents house.

13. PW-5 Md. Abdul Matin has stated that both accused and informant got married about 16/17 years back. The informant was suffering from epilepsy and as such the accused after returning from his work used to cook food. He had neither seen nor heard of any quarrel taking place between the informant and the accused. They have a female child and the accused is providing maintenance to her.

#### **APPRECIATION OF EVIDENCE**

14. The evidence on record reveals no proof of the fact that victim Musstt. Samsad Begum has sustained any grave injury. In her evidence PW-1 Musstt. Samsad Begum has averred the fact that initially there was alleged torture committed by accused to her for which she had to take resort in the house of her parent for some 7 or 8 years and thereafter due to reconciliation done by the villagers she had returned to her matrimonial house where she stayed for just 22 days and again alleging torture for demand of money and articles, she had to return to her parent's house. This fact also has the corroboration of her father PW-2 Md. Akter Ali Khan. PW-2 has clarified the fact that accused get married for the second time with another woman after 4 or 5 years after marrying his daughter wherefrom the torture stated by accused to her daughter. But this fact is missing in the version of PW-1 Samsad Begum, although admitted the fact of fighting used to take place with the co-wife of accused. She instead narrated the fact that after birth of her daughter, accused neglected to give proper medical treatment to their daughter, and demanded money and articles from the family of her instead.

15. Be that what it is, it has impeccably proved that both accused and victim Samsad Begum did not led any conjugal life for 7 or 8 years at a stretch and thereafter due to the intervention of the villagers they restored conjugal life but that last for only 22 odd days. The victim and her father have averred that the monetary demand and torture that was done 7 or 8 years back get repeated within that 22 days for which again the victim had to return to her parent's house. But except the assertion of victim and her parent there is no other independent witness which could vouch the fact that indeed there was a demand from the side of the accused, which she failed to fulfil. Though they alleged physical torture but except oral account there is not an iota of evidence to prove this fact that indeed torture had been meted out to her and those torture was grave in nature.

16. As regards mental torture the fact that has emerged is that accused allegedly did not food or clothing to victim and her daughter

and demanded a sum of Rs. 50000 and other articles. But as regards demand of Rs. 50000/- by accused the version of PW-2 Aktar Ali Khan is silent. PW-2 instead went too far by asserting that accused tried to kill his daughter by pouring kerosene oil over her. So, there is no unanimity in version between the version of victim and her father. Since, a village sitting took place which restored the conjugal relation between accused and victim after about 7 years, as such the evidence of those villagers could have lent force to the prosecution case. But the independent witnesses adduced in this case have stated nothing about the reason which compelled the victim live away from her husband.

17. There are plethora of cases where it has laid down by the Hon'ble Apex Court, 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. But in the instant case no grave physical injury has been proved by the prosecution. There is also a hazy notion in the prosecution evidence about the alleged mental harassment along with the reason for such harassment. There is a break of 7 or 8 years in the conjugal relation between accused and victim also do not suggest the fact that alleged harassment continued persistently. Hence, I am of the irrefragable opinion that the prosecution has failed to bring home the charge under section 498-A of the Indian Penal Code.

### **ORDER**

18. In view of the above discussion, I hereby acquit accused Md. Abdul Motleb from the charge under section 498-A of the Indian Penal Code and as such he is set at liberty forthwith. The bail-bond for the acquitted accused shall remain in force for a further period of six months.

19. The judgment is delivered and operative part of the same is pronounced in the open court on this 17<sup>th</sup> day of May, 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)

**A P P E N D I X**

**WITNESSES FROM THE PROSECUTION SIDE**

Musstt. Samsad Begum (PW-1)

Md. Aktar Ali Khan (PW-2)

Md. Abdul Rahman (PW-3)

Md. Joinaluddin (PW-4)

Md. Abdul Matin (PW-5)

**PROSECUTION EXHIBIT**

Ejhar (Ext-1)

**WITNESSES FROM THE DEFENCE SIDE**

Nil

**DEFENCE EXHIBIT**

Nil

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