

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.91/2016

State

Versus

Md. Abu Taher and others

(Under sections 498(A)/365/344/506/34 IPC)

Charge framed on : 10.12.2018
Evidence recorded on : 11.02.2019, 25.06.2019,
02.08.2019, 22.11.2019
Statements recorded on : 22.03.2021
Arguments heard on : 22.03.2021
Judgment delivered on : 05.04.2021
Advocate for the Prosecution : Mr. Jangki Doley
Advocate for the accused persons : Md. Eunus Ali

J U D G E M E N T

1. Accused persons stood for trial for commission of offence u/s 498(A)/365/344/506/34 IPC.
2. The complainant Musstt. Sarifa Begum filed a complaint petition before the learned Chief Judicial Magistrate, Lakhimpur, North

Lakhimpur and the said complaint petition was forwarded to the Officer-in-Charge, North Lakhimpur Police Station for registration and investigation of the case. Accordingly, the case was registered and investigated upon.

3. The informant case in brief is that the accused persons are her in-laws. Informant stated that she was married to Md. Mustafa Ali on 29.07.2013 according to Islamic rites and customs and thereafter they lived together as husband and wife. Out of the said wedlock a female child was born to them but unfortunately the girl child did not survive. During her conjugal life after the death of her child the accused persons demanded dowry and she was physically and mentally tortured by her father-in-law Md. Abu Taher and her mother-in-law Musstt. Halima Begum. Further it is alleged that her father-in-law and mother-in-law instigated her husband Md. Mustafa Ali to assault her. On 20.06.2021 the father-in-law and mother-in-law of the informant drove her out from her matrimonial house and threatened to perform second marriage of her husband. Thereafter the informant and her husband stayed in a rented house at Bantow village. The accused persons on 01.12.2015 came to the rented house of the informant and forcefully took back her husband to his house. Thereafter, the phone of husband remained switch off and she was also threatened with dire consequences if she ever tried to contact with her husband. As she was waiting for the return of her husband, there was some delay in lodging the case.
4. On receipt of the ejahar, Officer-in-Charge of North Lakhimpur Police Station registered the case as North Lakhimpur P.S. case no.44/2016 u/s 143/498(A)/448/365/506/34 IPC. Thereafter Investigating Officer launched investigation of the case and submitted chargesheet u/s 498(A)/143/448/365/506/34 of the Indian Penal Code against the accused persons namely Md. Abu Taher, Md. Mozibur Rahman, Musstt. Halima Khatoon, Musstt. Foridul Rahman and Musstt. Fatema Khatoon.
5. Thereafter, cognizance has been taken and summon have been issued to the accused persons. On appearance of accused persons,

necessary documents required u/s 207 Cr.P.C have been furnished to them. On perusal of the materials on record formal charges u/s 498(A)/365/344/506/34 IPC is read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

6. Prosecution in support of its case has examined only five (5) witnesses.
7. Accused persons are examined under section 313 Cr.P.C., wherein they denied the allegations levelled against them. Accused persons denied adducing evidence in defence.
8. I have heard the arguments advanced by the learned counsel for the accused persons 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 persons being the relative of the husband (Md. Mustafa Ali) of the informant, in furtherance of their common intention, after the death of the child of the informant mentally and physically tortured the informant by demanding dowry and subjected the informant to cruelty, and thereby committed the offence under section **498A/34** of the Indian Penal Code?

Point No 2: Whether the accused persons on 01.12.2015 in the evening, in furtherance of their common intention, abducted the husband of the informant, namely, Md. Mustafa Ali, with the intention of causing Md. Mustafa Ali to be secretly and wrongfully confined, and thereby committed offence under section **365/34** IPC?

Point No 3: Whether the accused persons on the same date, time and place in furtherance of their common intention, wrongfully confined the husband of the informant, namely, Md. Mustafa Ali, for ten days or more, and thereby committed offence under section **344/34** IPC?

Point No 4: Whether the accused persons on the same date, time and place in furtherance of their common intention, criminally intimidated the informant by threatening to kill her, and thereby committed offence under section **506/34** IPC?

DISCUSSIONS, DECISIONS AND REASONS THEREOF:

9. 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. **P.W-1 Musstt. Sarifa Begum** is the informant of the present case and in her evidence she stated that her husband used to consume liquor and assaulted her. Her mother-in-law Musstt. Halima Begum also assaulted her. Her father-in-law Md. Abu Taher thereafter asked her to return back to her parental house and accordingly she went away and resided at her parental house. After one year the husband of the informant came and took her along with their daughter back to her matrimonial house. After a few days she was again assaulted by her husband and in the meantime, her daughter expired. Thereafter she was asked to return back to her parental house by her father-in-law Md. Abu Taher and accordingly the informant returned back to her parental house.
10. The informant though alleged that her husband and her mother-in-law assaulted her but she remained silent regarding any torture meted to her by the other accused persons. Further she remained silent that any demand for dowry was made by her in-laws. In her ejahar she stated that after she was driven out from her matrimonial house, her husband took her to a rented house where they lived together. Further the allegation that her in-laws came and took away her husband has not been corroborated by her. Rather in her cross-examination she stated that after her marriage she resided separately in a rented house and thereafter they went to a rented house and stayed there. The allegations made in the ejahar appears to be contradictory one. Further she denied having giving statement before the police or in the court. It further appears that there is no

medical evidence to prove that the informant received any injuries due to physical assaults on her. The fact that her husband stayed as a house husband (ghor-jowai) in her parental house has been suppressed by the informant in her evidence as well as ejahar. Hence, the evidence of P.W-1 appears to be highly doubtful.

11. **P.W-2 Supdul Ali** is the father of the informant and he stated that after marriage his daughter had conjugal life with Mustafa Ali for about 15 days and thereafter he fled away. Her husband again came back after the informant gave birth to the child and took her back to her matrimonial house. Unfortunately the child expired and her husband used to torture her after consuming liquor. Further P.W-2 stated that her father-in-law lodged a murder case against them. Evidence of P.W-2 contradicted with the evidence of the informant. This witness never stated that the parties resided in a rented house but rather stated that they resided in his house from where the husband of the informant fled away. Further P.W-2 stated that they lodged this case in order to counter the case lodged against them by the father-in-law of the informant. This admission itself creates doubt about the prosecution case.

12. **P.W-3 Samir Ali** is the brother of the informant. In his evidence he stated that the informant got married to Mustafa Ali and they lived together as husband and wife. Accused Md. Abu Taher and Musstt. Halima Begum tormented tortures upon the informant and she had to return back to her parental house. It is further alleged that accused persons demanded money and articles from the informant and that the husband of the informant Mustafa Ali married another woman.

The evidence of this witness appears to be doubtful as the informant and P.W-2 in their evidence did not allege that money was demanded by her husband other accused persons. Neither the informant nor P.W-2 stated that the husband of the informant married another woman. P.W-3 in his cross-examination stated that the informant resided with her husband in her parental house and therefore, there is nothing to show that the other accused persons are involved in the

alleged incident. Further P.W-3 also admitted the fact that the father-in-law of the informant lodged a case against him. P.W-3 being the brother of the informant as well as his enmity with the father-in-law of the informant makes him a highly interested witness.

13. **P.W-4 Md. Sattar Ali** in his evidence stated that he came to know that the father-in-law and mother-in-law of the informant tormented tortures on her but the husband of the informant never tortured her. The informant was chased out from her matrimonial house and no one came to take her back. Evidence of this witness goes to show that he is a reported witness and he has got no personal knowledge about the incident therefore his evidence cannot be accepted.

14. **P.W-5 Budheswar Bora** is the Investigating Officer of this case. He described the steps taken by him during investigation. He proved the sketch map of the place of occurrence marked as exhibit 2 and submitted chargesheet against the accused persons after finding sufficient materials marked as exhibit 3.

The evidence of the Investigating Officer can at best supported the prosecution case but his evidence along cannot prove the guilt of the accused persons.

15. In the instant case all the prosecution witnesses have close relation with each other. The witnesses stated that they have not given any statement to the police. Thus the whole evidence of the witnesses appears to be inconsistent and a contradictory one. In view of the filing of criminal case against the witnesses, the present case appears to be highly doubtful. The witnesses have contradicted with each other making their evidence highly unreliable. Considering the evidence in entirety, I am constrained to hold that the accused persons deserves to get the benefit of doubt and are accordingly acquitted.

ORDER

16. In view of the above discussions, I am of the considered opinion that,

prosecution has failed to establish the case against accused persons namely Md. Abu Taher, Md. Mozibur Rahman, Musstt. Halima Khatoon, Musstt. Foridul Rahman and Musstt. Fatema Khatoon. Accordingly, accused persons are acquitted of the charge u/s 498(A)/365/344/506/34 IPC levelled against them in this instant case.

17. Set the accused persons at liberty forthwith.

18. The bail bonds for the accused persons are extended for a further period of six (6) months.

19. The case is disposed of on contest accordingly.

Given under my hand and seal on this 05 day of April, 2021 at North Lakhimpur, Lakhimpur.

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

APPENDIX**A. WITNESSES OF PROSECUTION:**

1. P.W-1: Musstt. Sarifa Begum
2. P.W-2: Md. Supdul Ali
3. P.W-3: Md. Samir Ali
4. P.W-4: Md. Sattar Ali
5. P.W-5: Budheswar Bora

B. EXHIBITS OF PROSECUTION:

1. Exhibit 1 : Ejahar
2. Exhibit 1(1) & (2) : Signature of the informant in the ejahar.
3. Exhibit 2 : Sketch Map
4. Exhibit 2(1) : Signature of P.W-5 in the sketch map.
5. Exhibit 3 : Chargesheet
6. Exhibit 3(1) : Signature of P.W-5 in the chargesheet.

C. WITNESS OF DEFENCE: NIL**D. EXHIBITS OF DEFENCE: NIL**

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