

IN THE COURT OF ASSTT. SESSIONS JUDGE :::::::::::NALBARI

Present : Himakshi Thakuria Buragohain.
Asstt. Sessions Judge,
Nalbari.

SESSIONS CASE NO : 54/18

U/S 498-A/307 IPC

STATE OF ASSAM

- VS -

Md. Anowaruddin Ahmed

..... Accused person.

Committed by learned JMFC, Nalbari, vide order dated 21/07/2018 in connection with PRC Case No. : 12/18.

APPEARANCE :

Advocate for the prosecution : Mr. Mrigen Das, Learned Addl. PP.

Advocate for the defence : Jayanta Kalita, Purabi Sarma

Date of Evidence : 30/10/2018,17/11/2018, 3/12/2018,
11/12/2018, 2/01/2019 and
21/01/2019.

Date of Argument : 28/01/2019.

Date of Judgment : 28/01/2019.

J U D G M E N T

1. The gist of the prosecution case in brief is that informant Najida Khatun Sultana lodged an ejahar before Nalbari Sadar Police Station on 23/05/2018 stating interalia that about 4 years ago accused Md. Anowaruddin Ahmed married her according to Muslim rites. Out of their wedlock a female child was born to them. After the marriage the accused tortured her both physically and mentally. On 22/05/2018 at about 4 PM the accused confined her in a room and locked the door and assaulted her in different parts of her body and also attempted to kill her by gagging her mouth with a pillow. Hence, this case.

2. On receipt of the ejahar police registered a case as Nalbari PS Case No. 352/18 u/s 498(A)/307 IPC and started investigation. After completion of investigation the I/O submitted charge sheet against accused u/s 498(A)/307/323 IPC. On perusal of the case record the Learned JMFC, Nalbari committed this case to the Court of Hon'ble Sessions Judge, Nalbari u/s 498(A)/307 IPC. On receipt of the committal paper and GR Case Record Hon'ble Sessions Judge, Nalbari started Sessions case against the accused and thereafter transferred this case to this court for disposal.

3. After hearing the learned counsels of both sides and on perusal of the case diary, charge was framed against the accused u/s 498(A)/307 IPC. The charge so framed was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

4. During trial, prosecution side examined as many as 7(seven) witnesses including the informant and the MO to prove the charge against the accused. Accused was examined u/s 313 CrPC. The statement of defence is recorded in a separate sheets. The defence case was of complete denial and the defence side has not adduced any defence evidence.

5. **POINTS FOR DETERMINATION**

i) Whether the accused after marriage subjected the victim/ informant to cruelty by harassing her mentally and physically on her failure to meet the demand of dowry made by him ?

ii) Whether the accused on 22/5/2018 at Vill- Jyotinagar attempted to commit murder of the informant/ victim by gagging her mouth with a pillow ?

DISCUSSION DECISION AND REASONS THEREOF

6. I have heard learned counsels for both the parties and gone through the evidence on record. Learned counsel for the prosecution has submitted that all the witnesses have supported the prosecution story and this is a fit case to convict the accused u/s 498(A)/307 IPC.

7. On the other hand learned defence counsel has submitted that prosecution has failed to prove the case. There are discrepancies in the evidence adduced before the court and the statements of the witnesses recorded u/s 161 CrPC. Learned defence counsel has further submitted that the witnesses nullified the prosecution case and from the evidence of PWs no ingredients of offence is made out against the accused.

8. It is at this stage expedient to cast a glance at the evidences of the prosecution witnesses.

9. In order to find out whether the victim sustained any injury on the day of occurrence, let us at first go through the evidence of PW-5, Dr. Khanindra Mohan Saud , who is the MO in this

case. PW 5 stated that on 23/05/2018 at about 09:35 PM he examined one Narjina Khatun Sultana, aged about 23 years, with emergency Regn. No 11191 vide reference Nalbari PS Case No 352/18 u/s 498(A)/307 IPC. According to PW 5 on examination he found contusion size 5x5 cm over right cheek bruise color. City scan head was advised. PW 5 stated that age of injury was recent and the injury was simple and caused by blunt object. From the evidence of PW 5 it appears that on the day of lodging the ejahar there was injury on PW 2.

10. Now, in order to find out whether the injury sustained by the victim was caused by the accused for dowry or not, let us go through the evidence of PW 6, Nazida Khatun, who is the informant in this case. PW 6 stated that she was married to the accused on 20/06/2014 as per Shariat and after marriage she resided with her husband in his place of posting at Kokrajhar. PW 6 stated that about 1 year back he got transferred to Baksa district and after that they resided in Nalbari town for 1 year. According to PW 6 during their stay at Kokrajhar her husband used to assault her. But after coming to Nalbari his tortures upon her increased to a great extent. PW 6 alleged that the accused used to demand Rs. 50,000/- from her parents and also has extra marital affair with another lady. It is also alleged that prior to 7 days before lodging the ejahar the accused hit her on her face and broke her teeth. PW 6 further alleged that on the day of lodging the ejahar the accused pressed her mouth with a pillow and also tried to strangulate her. Somehow she managed to escape and locked herself in another room. Thereafter she lodged the ejahar after the accused went for his duty.

11. If we go through the examination-in-chief of PW 6 and the ejahar marked as Exhibit 2. We find that in her ejahar PW 6 stated

that her husband assaulted her and attempted to kill her on 22/5/18 at 4 PM. Whereas in her chief PW 6 stated that on the day of lodging the ejahar the accused pressed her mouth with a pillow and tried to strangulate her and when she managed to escape the accused went for his duty. In her cross PW 6 stated that the accused goes for his duty at 8-30 AM. PW 6 also stated that the occurrence took place at 8-30 AM. Hence we find two contradictory statement of PW 6. In her ejahar the time of occurrence is 4 PM. Whereas in her cross the time of occurrence is 8-30 AM. Again, in her ejahar PW 6 stated that the occurrence took place on 22.5.18. But in her examination in chief PW 6 stated that on the day of lodging the ejahar the accused assaulted her. The ejahar was lodged on 23.5.2018. Here also PW 6 contradicted from her earlier statement.

12. Finally let us find out what PW 1, PW 2, PW 3 and PW 4, who are the immediate neighbours of the accused has stated in their evidence. PW 1, PW 3 and PW 4 could not say anything about the occurrence. PW 2, who is he tenant of the accused stated in his cross examination that the accused is man of good character and it is the informant who always start the quarrel. PW 2 also stated that the accused does not quarrel with the informant but tries to make her understand.

13. From the above evidence it appears that except PW 6 none of the PWs has alleged anything against the accused. It is also seen that PW 6 has no quality of sole evidence. It is held in 2018 AIR (Criminal) 477 that testimony of a sole witness must be confidence inspiring and beyond suspicion, thus leaving no doubt in the mind of the court. But in our case, the evidence of PW 6 suffers from so many material contradiction and this raises a doubt regarding the

genuineness of the prosecution story. As per the evidence of PW 6 she was assaulted in the morning of 22.5.2018. But she left the house of the accused on 23.5.18 and lodged the ejahar at 8.40 PM She was examined at about 9.35 PM on the next day of occurrence. According to PW 5 the MO PW 6 sustained injury on the cheek and CT scan of the head was advised. But PW 6 did not mention about any such injury sustained by her due to the assault. Apart from that PW 5 stated that the injuries sustained by PW 6 may be caused by fall. If the accused tried to kill PW 6 by gagging her mouth with a pillow and also by strangulating her, the informant should have gone to the doctor on the day of occurrence itself.

14. In view of the above discussion, the allegation made in the ejahar against the accused are not true and as such the accused is not held guilty of the offence u/s 498(A)/307 IPC.

O R D E R

15. From the discussion made above, I find that the prosecution has miserably failed to prove the offence u/s 498(A)/307 IPC against the accused.

Hence, the accused Anowaruddin Ahmed is found not guilty from the charge of offence u/s 498(A)/307 IPC.

The accused person is set free at his liberty forthwith.

Bail bond furnished by the accused shall stand canceled after period of 6 months.

Given under my hand and seal of this court on this the 28th day of January/2019.

Asstt. Sessions Judge,
Nalbari

Dictated & corrected by me

Asstt. Sessions Judge, Nalbari

A P P E N D I X

(A) **Prosecution witnesses:**

PW 1 : Maina Das(Informant),
PW 2 : Anjana Barman,
PW 3 : Sunil Das,
PW 4 : Manti Choudhury,
PW-5 : Dr. Khanindra Mohan Saud(MO),
PW 6 : Najida Khatun Sultana (informant) and,
PW 7 : SI Mehere Khan (I/O).

(B) **Prosecution exhibited documents :**

Ext-1 – Injury report,
Ext- 1(1) Signature of PW 5,
Ext 2 FIR,
Ext- 2(1) Signature of PW 6,
Ext-3 : Sketch Map,
Ext-3(1) Signature of PW 7,
Ext-4 : Charge Sheet,
Ext-4(1) Signature of PW 7.

(C) **Defence witnesses** : Nil.

(D) **Defence exhibited document** : Nil.

Asstt. Sessions Judge,
Nalbari