

::IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, NALBARI::

PRESENT : = Sri K. C. Boro, A.J.S.

Ref: GR Case No.1323/2011

State

-VS-

Gautam Das

S/o- Bongshidhar Das

Village- Dewripara

PS- Bongaigaon.

Dist. Bongaigaon, Assam

..... Accused person.

u/s-493/420/498(A) IPC.

EVIDENCE RECORDED ON : 28.09.2018, 02.11.2018, 11.04.2019
& 11.11.2019.

ARGUMENT HEARD ON : 15.02.2019.

JUDGMENT DELIVERED ON : 25.02.2020.

ADVOCATES APPEARED :

For the State : Mr. D. Talukdar, Ld. A.P.P.

For the Accused : Mr. M. Mishra, Ld. Advocate.

J U D G M E N T

1. The case of the prosecution, in a brief, is that an FIR was filed on 28.09.2011, before the In-charge of Doulasal Out Post by informant Champa Das against the accused person namely Gautam Ch. Das, alleging inter-alia that she got married with the accused on 13.09.2010 out of love-affairs at Govt. Registration Office. She stated that after her marriage with the accused, she and the accused cohabited at her

parental house. Accused demanded Rs.1,00,000/- from her. She further stated that accused has already taken Rs.1,00,000/- from her parents prior to her marriage. Later on, accused stated her that he would take her to his residence and left the residence of the informant and since then, the accused has not inquired about her. Hence, the case.

2. On receiving the case, the In-charge of Doulasal OP entered the information in the General Diary vide GDE No.474 dated 28.09.2011 and forwarded the FIR to Mukalmua PS for registration. On receipt of the same, the Officer-in-Charge of Mukalmua PS registered Mukalmua PS Case No.275/2011 u/s-493/420/498(A) IPC and police force set into motion. On completion of investigation the I.O laid charge-sheet against the accused person namely Gautam Das u/s-493/420/498(A) IPC vide CS No.131/2013 dated 31.08.2013 by showing him as an absconder.

3. In pursuance of the process issued and in compliance with the order of Hon'ble Gauhati High Court, the accused person appeared before the court and on his appearance the copies of the case as per the mandate of law u/s-207 Cr.P.C. were furnished to the accused person. Thereupon prima facie case was found against the accused person u/s-493/420/498(A) IPC and the charges of the offence u/s-493/420/498(A) IPC were framed, read over and explained to the accused person and he was asked whether he would plead guilty of the offences charged or claimed to be tried. He had pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution side examined five (5) witnesses. 313 Cr.P.C statement of accused person was dispensed with. The defence side declined to adduce any evidence.

5. I have heard the argument of both the sides. Ld. APP submitted that the prosecution has been successful in proving this case against the accused beyond all reasonable doubt. Refuting the argument of Ld. APP, Ld. Defence counsel strenuously argued that there is no iota of proof that accused has committed any offence. Hence, he submitted that accused should be acquitted.

POINTS FOR DETERMINATION

- Whether the accused person namely Gautam Das, on or before 28.09.2011, at Doulasal under Mukalmua PS, by practicing deceit caused to the Informant, a woman by falsely representing himself to be an unmarried man, who was not lawfully married to her, to believe that she was lawfully married to him and in that belief cohabited with her or had sexual intercourse with her and hence liable to be punished under section 493 of IPC ?
- Whether the accused person namely Gautam Das, on or before 28.09.2011, at Doulasal under Mukalmua PS, has cheated the informant even after executing marriage agreement and by dishonestly inducing her to deliver Rs.1,00,000/- to him and hence liable to be punished under section 420 of IPC ?
- Whether the accused person namely Gautam Das, on or before 28.09.2011, at Doulasal under Mukalmua PS, being the husband of victim Champa Das subjected her to cruelty which was of such a nature as to cause grave injury to her life or limb and coerced her to meet unlawful demand and thereby committed an offence punishable u/s 498(A) I.P.C.?

DECISION AND REASONS THEREOF:-

6. PW-1 informant, Ms. Champa Das deposed in her evidence that she entered into Court Marriage with accused in the year 2011 at Barpeta Court. She stated that after the marriage, accused kept her at a rented room at Simlaguri, Barpeta. Gautam Das was pursuing B.Com at that time. The informant alleged that accused never used to take her to her matrimonial house. After 4/5 months, the parents of accused came to know about their relation, but they also did not allow her to visit their residence. Later on, accused stopped inquiring about her. She filed the FIR vide Ext.1 and Ext.1(1) is her signature. Presently, she is staying at her parental house.

7. During cross-examination, this witness deposed that she has

been staying with her parents since last 5-6 years at Doulasal. She submitted copy of Notary Agreement to police. She could not remember the date of her marriage. Accused filed a case bearing TS No.239/2011 in the court of Munsiff No.1, Barpeta for declaring the marriage agreement as null and void. She has not filed any Appeal against the decree of TS Case No.239/2011. She admitted that she filed this case after one year of accused starting to live separately. She has not cited any reason for delay in lodging the FIR. Furthermore, Ld. Defence counsel put many suggestive question to this witness which she denied.

8. PW.2 is Parul Das. She deposed that her daughter and accused have love-affairs and out of the same, both of them executed registered marriage at Barpeta and both of them stayed at a rented room at Barpeta Road. But the parents of the accused did not allow her daughter to come to their residence. This witness came to the residence of Gautam for a discussion, but she was misbehaved by the mother and aunt of accused. From that day onward, accused has not visited her residence. Later on, her daughter filed this case. Police recorded her statements.

9. During cross-examination, this witness deposed that she does not know whether the accused has challenged the marriage agreement at Barpeta court. She has forgotten on which date she visited the residence of the accused. Furthermore, Ld. Defence counsel put many suggestive questions to this witness which she denied.

10. PW.3 is Archana Das. She deposed that she knew both the sides. She stated that informant stayed at her adjacent quarter at Doulasal APBN. She heard that accused and the informant got married. But she has not seen their marriage. Police has not recorded her statements.

11. During cross-examination, this witness deposed that she has not seen the marriage being solemnized between the accused and the informant.

12. PW.4 is SI Ratna Kt. Sarma, I.O. He deposed that on 28.09.2011, he was working as I.C in Doulasal OP. On that day, informant Champa

Das filed a written FIR in the Doulasal OP. he entered the same in the General Diary vide Doulasal OP GDE No.474 dated 28.09.11 and forwarded the FIR to Mukalmua PS for registration. On receipt of the same, Mukalmua PS Case No.275/11 u/s-493/420/498(A) IPC was registered and he was given the task of investigation. He visited the place of occurrence on 29.09.11, drew the sketch map, recorded the statements of the witnesses including the complainant at the PO. At that time, he got transferred, so, he handed over the Case diary to the O.C of Mukalmua PS.

13. During his cross-examination, he deposed that he received the ejahar from Champa Das. Champa Das's father is a police personnel who is his colleague. In his further cross-examination, this witness deposed that the FIR has been received by him. He took the task of investigation. He did not record the statement of witness Champa Das. He recorded the statement of witness Parul Das. She did not state before him about staying at rented house at Barpeta; about staying at rented house at Bongaigaon; the parents and aunt (pehi) misbehaved with her. The place of occurrence is near the Head Quarter of 14th Battalion. He did record the statement of Arbinda Das. He denied that he did not investigate the case fairly.

14. PW.5 is I.O Sanjay Kr. Laskar. He deposed that on 10.04.13, he was working as I.C at Doulasal OP under Mukalmua PS. On that day, he was handed over the Case diary of Mukalmua PS Case No.275/11 from the then O.C of Mukalmua PS for further investigation. He perused the CD and found that the case was long pending and the accused was yet to be arrested. He searched for the accused, but failed to trace him out. The previous I.O has already completed the investigation. As the case was long pending, he filed charge-sheet against accused Gautam Das u/s-493/420/498(A) IPC showing him as an absconder. Ext.2 is the charge-sheet and Ext.2(1) is his signature.

15. During cross-examination, this witness denied that he did not search for the accused. He did not record any evidence.

16. These are the materials on record.

17. I have carefully perused the evidence on record. Now the provisions of Sec. 498(A) I.P.C. read as under :

498(A) IPC: Husband or relative of husband of a woman subjecting her to cruelty; Whoever being the husband or relative of the husband of a woman subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation for the purpose of this section "cruelty" means-

(a) Any willful conduct which is of such a nature as is likely to drive the women to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) Harassment of the woman where such harassment is with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

18. Section 493 of IPC, reads as follows---

Cohabitation caused by a man deceitfully inducing a belief of lawful marriage- Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief.

Thus, it is clear that to attract section 493 of IPC, the Prosecution must prove, that, the accused must induce a woman, who is not lawfully married to him, to believe that he is married to her and as a result of the aforesaid representation, the woman should believe that she was lawfully married to him and there should be cohabitation or sexual intercourse as a result of the deception.

19. The essential elements of section 420 of IPC are as follows----

- a. Cheating
- b. Dishonest inducement to deliver property or to make alter or destroy any valuable security or anything which is sealed or is capable of being converted to a valuable security and
- c. Mens rea of the accused at the time of making the inducement.

20. Again, the offence of cheating is described in section 415 of the IPC, which are as follows:-

- a. Deception of a person either by making a false or misleading representation or by other action or omission;
- b. fraudulently or dishonestly inducing any person to deliver any property; or
- c. To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

21. Now, let us see whether the prosecution has been able to bring home the guilt of the accused person beyond all reasonable doubt. Let me first scrutinize the evidence on record. PW-1 informant, Ms. Champa Das deposed in her evidence that she entered into Court Marriage with accused in the year 2011 at Barpeta Court. She stated that after the marriage, accused kept her at a rented room at Simlaguri, Barpeta. The informant alleged that accused never used to take her to her matrimonial house. After 4/5 months, the parents of accused came to know about their relation, but they also did not allow her to visit their residence. Later on, accused stopped inquiring about her. During cross-examination, this witness deposed that she could not remember the date of her marriage. Accused filed a case bearing TS No.239/2011 in the court of Munsiff No.1, Barpeta for declaring the marriage agreement as null and void. She has not filed any Appeal against the decree of TS Case No.239/2011. She admitted that she filed this case after one year of accused starting to live separately. She has not cited any reason for delay in lodging the FIR. Next witness is PW.2 Parul Das who is the mother of informant. She deposed that her daughter and accused have love-affairs and out of the same, both of them executed registered marriage at Barpeta and both of them stayed at a rented room at Barpeta Road. But the parents of the accused did not allow her daughter to come to their residence. This witness came to the residence of Gautam for a discussion, but she was misbehaved by the mother and aunt of accused. During cross-examination, this witness deposed that she does not know whether the accused has challenged the marriage agreement at Barpeta court. But,

from the evidence of PW.4 (I.O), it is also found that PW.2 Parul Das (mother of informant) did not state before him about staying of PW.1 at rented house at Barpeta and Bongaigaon and that the parents and aunt (pehi) misbehaved with her which leads to a vital contradiction. **In the case of Shamal Ghosh vs State of West Bengal reported in 2012 All. SCR 1921**, the Hon'ble court held that *"Omission to state a fact whether it is material contradiction or not is a question of fact. The discretion is left with the court to determine whether it is a contradiction or material contradiction which renders the entire evidence of the witness untrustworthy and affects the case of the prosecution materially.* Hence, I find that PW.2 is not a believable witness. Next witness is PW.3 Archana Das who stated nothing material to the prosecution story. Next witnesses viz. PW.4 and PW.5 are I.O who are formal witness.

22. In the instant case, the informant during her cross-examination admitted that she filed this case after one year of accused starting to live separately from her. She also admitted that she has not cited any reason for delay in lodging the FIR. The complainant complains of dowry demand and cheating, but she did not go to the nearest police station even after the incident. No explanation worth the name for delay in filing the complaint has come on record. I am of the opinion that the circumstances raises considerable doubt regarding the genuineness of the complaint. It is hence held that no explanation was given to show the inordinate delay in lodging this case. Also the danger of introduction of a concocted, colored version as a result of deliberation and consultation, cannot be ruled out.

23. Ld. counsel appearing for the accused submitted before this court that the notary marriage agreement (deed No.24/2010) has been declared null and void by Ld. Munsiff No.1, Barpeta in TS No.239/2011. From the cross-examination of PW.1, it appears that she has not challenged the judgment and decree dated 06.06.2013 in TS No.239/2011 passed by Ld. Munsiff No.1, Barpeta. The prosecution is totally silent regarding this vital point.

24. Moreover, from the evidence of the I.O Ratna Kt. Sarma, it

appears that he did not record any statement of informant Champa Das. Besides, the prosecution has failed to exhibit the deed of marriage executed by Notary of Mandia before this court. There is no independent witness who could corroborate the evidence of the informant.

25. In the result, it is held that the prosecution has failed to prove the guilt of the accused person beyond all reasonable doubt.

26. In the backdrop of the entire evidence on record and taking into account the facts and circumstances of the case, accused person namely Gautam Das is acquitted of the offences u/s-493/420/498(A) IPC and set at liberty forthwith.

27. Bail bond will remain in force till expiry of the appellate period

28. Judgment is written in separate sheets and delivered in open court.

Given under my hand and seal of this court on this the 25th day of February, 2020.

(Sri K.C. Boro)
Chief Judicial Magistrate
Nalbari

Dictated and corrected by me

(Sri. K. C. Boro)
Chief Judicial Magistrate
Nalbari

Jitul

APPENDIX:

Witnesses for the prosecution

- PW.1 - Champa Das, informant.
- PW.2 - Parul Das.
- PW.3 - Archana Das.
- PW.4 - SI Ratna Kt. Sarma.
- PW.5 - I.O Sanjay Kr. Laskar.

Witnesses for the defence

None

Prosecution Exhibits

- Ext.1 - FIR.
- Ext.1(1) - Signature of informant.
- Ext.2 - Charge-sheet.
- Ext.2(1) - Signature of I.O Sanjay Kr. Laskar.

Defence Exhibits

None

(Sri. K. C. Boro)
Chief Judicial Magistrate
Nalbari