

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

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

Ref: GR Case No.425/2015

State

-VS-

Md. Mojamil Rahman

S/o- Md. Akhmat Ali

Village- No.2 Loharkata

PS- Mukalmua

Dist. Nalbari, Assam

..... Accused person.

u/s-498(A) IPC.

EVIDENCE RECORDED ON : 31.12.2016, 09.06.2017, 24.10.2019.

ARGUMENT HEARD ON : 19.02.2020.

JUDGMENT DELIVERED ON : 26.02.2020.

ADVOCATES APPEARED :

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

For the Accused : Smti. N. Patowary, 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 22.03.2015, before the Officer-in-Charge of Mukalmua PS by informant Miss Sony Begum against the accused persons namely Mojamil Rahman, Akhmat Ali and Sahedbanu Bibi, alleging, inter-alia that she got married with accused Mojamil Rahman about four years ago. She alleged that on the instruction of co-accused, her husband i.e. accused Mojamil used to torture her physically by demanding dowry. She further

alleged that on 21.03.2015, at about 11.00 pm, accused persons assaulted her. Further, accused Mojamil also threatened her with dire consequence and also drove her out of her matrimonial house. Hence, the case.

2. On receiving the case, the Officer-in-Charge of Mukalmua PS registered Mukalmua P.S. Case No.92/2015 u/s-498(A)/34 IPC and started investigation. On completion of investigation the I.O laid charge-sheet against the accused person namely Md. Mojamil Rahman u/s-498(A) IPC vide CS No.55/2015 dated 27.03.2015.

3. In pursuance of the process issued, 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-498(A) I.P.C and the charges of the offence u/s-498(A) I.P.C. 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 as many as six (6) 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.

POINT FOR DETERMINATION

- Whether the accused person namely Md. Mojamil Rahman, on or before 21.03.2015, at about 11.00 pm, at village No.2 Loharkata under Mukalmua PS, being the husband of victim Miss Sony Begum 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 is Md. Siraj Ali. He deposed that he knew both the sides. About a year ago, one day, he was working in the residence of accused. Then the informant left the residence of accused and did not return back.

7. Defence declined to cross-examine this witness.

8. PW.2 is Abdul Rouf. He deposed that he knew both the sides. About a year ago, he was working in the residence of accused. Then, police came and asked him why the wife of accused had left. He stated before police in negative.

9. Defence declined to cross-examine this witness.

10. PW.3 is Miss Anowara Begum. She deposed that she knew both the sides. She heard that there was quarrel between both the sides. The informant is not staying with the accused presently.

11. During cross-examination, she deposed that informant is a Hindu girl. She knew that informant used to consume alcohol.

12. PW.4 is Miss Arjuwara Begum. She deposed that she knew both the sides. She heard that accused had married the informant.

13. During cross-examination, she deposed that she does not know anything about the incident.

14. PW.5 is Medical Officer Dr. Rup Kt. Barman. He deposed that on 22.03.2015, at about 6.20 pm, he examined one Sony Begum at Mukalmua PHC and found history of assault. In his opinion, there is no injury. Ext.1 is the Medical Report and Ext.1(1) is his signature.

15. Defence declined to cross-examine the Medical Officer.

16. PW.6 is I.O Putul Deka. His evidence is of routine nature depicting the each stage of investigation.

17. During cross-examination, the I.O deposed that he collected the medical report of the victim wherein the doctor did not detect any injury. The incident occurred on 21.03.2015 and the FIR was filed on

23.03.2015.

18. These are the materials on record.

19. 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.

20. Before scrutinizing the evidence on record, it is pertinent to mention herein that the prosecution has failed to bring the informant cum victim Ms. Sony Begum to the dock. Summons to her returned with report that Ms. Sony Begum has left village No.2 Loharkata and no one could state the present whereabouts of informant Ms. Sony Begum. Let us now scrutinize the evidence on record. In the instant case, the prosecution examined four villagers and two official witnesses. The independent witnesses viz. PW.1, PW.2, PW.3 and PW.4 examined by the prosecution have stated nothing incriminating material against the accused. Next witness PW.5 (Medical Officer) who examined the victim on the day of filing the FIR did not detect any physical injury upon the person of the victim. Next witness is the I.O who is also a formal witness.

21. The evidence on record does not lucidly portray the necessary elements required to constitute offences u/s-498(A) IPC. The

prosecution has failed to prove the guilt of the accused person beyond all reasonable doubt.

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

23. Bail bond would remain in force till expiry of the appellate period.

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

Given under my hand and seal of this court on this the 26th 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 - Md. Siraj Ali.
- PW.2 - Md. Abdul Rouf.
- PW.3 - Ms. Anowara Begum.
- PW.4 - Ms. Arjuwara Begum.
- PW.5 - M.O Dr. Rup Kt. Barman.
- PW.6 - I.O Putul Deka.

Witnesses for the defence

None

Prosecution Exhibits

- Ext.1 - Medical Report.
- Ext.1(1) - Signature of Medical Officer.
- Ext.2 - Sketch map.
- Ext.2(1) - Signature of I.O.
- Ext.3 - Charge-sheet.
- Ext.3(1) - Signature of I.O.

Defence Exhibits

None

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