

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

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

**Ref: G.R Case No. 146/2017**

State

-vs-

Md. Mustadur Rahman

S/o- Md. Motiur Rahman

Resident of Word No.8, Jyotinagar,

P.S-Nalbari,

Dist. Nalbari, Assam.

..... Accused person.

u/s- 498(A) of I.P.C.

EVIDENCE RECORDED ON : 27.03.18, 20.04.18, 14.11.18, 14.06.19,  
29.08.19, & 05.02.20.

ARGUMENTS HEARD ON : 12.03.2020.

JUDGMENT DELIVERED ON : 18.06.2020.

**ADVOCATES APPEARED :**

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

For the Accused : Mr. Kamal Ali, Ld. Advocate.

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

1) The case of the prosecution in brief, is that an FIR was filed on 02.02.2017 before the Officer-in-Charge of Nalbari P.S by the informant Miss Nigar Sultana against her husband namely Mustadur Rahman and her in-laws alleging inter alia that about two months ago she got

married with the accused Mustadur Rahman as per Muslim 'sariyat'. But after marriage the accused persons tortured her physically and mentally by demanding dowry. That on 02.02.2017 at about 1:30 pm, the accused tortured her physically and confined her in the house and thereafter she informed the matter to her father over telephone and her father went to the police station and with the help of police personnel her father rescued her from her matrimonial house. Thereafter, she along with police personnel went to her matrimonial house to bring her important documents but she noticed that the accused had broke down the locker of her 'godrej' and took some of her important documents along with her golden ornaments. Hence, the case.

2) On receiving the case, the O/c Nalbari P.S registered the case as Nalbari P.S. Case No. 61/17 u/s- 498(A)/342/379/34 IPC and started investigation. On completion of investigation the I.O laid charge-sheet against the accused person namely Mustadur Rahman u/s- 498(A) IPC vide C.S No. 55/17 dated 28.02.2017.

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 was furnished to him. Thereupon prima facie case was found against the accused person u/s- 498(A) I.P.C and accordingly charge for offence u/s-498(A) I.P.C was framed, read over and explained to the accused person and he was asked whether he would plead guilty to which he pleaded not guilty and claimed to be tried.

4) **POINT FOR DETERMINATION**

I. Whether the accused Mustadur Rahman being the husband of informant Miss Nigar Sultana on or before 02.02.2017 at Ward No.8, Jyotinagar under Nalbari P.S, subjected the informant / victim Miss Nigar Sultana 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.?

5) **DECISION AND REASONS THEREOF:-**

During the trial, the prosecution side examined five (5)

witnesses and one court witness namely CW1. The statement is defence of the accused u/s 313 of Cr.P.C was recorded wherein he took the plea of innocence and false implication. The defence side declined to adduce any evidence. I have heard the arguments advanced by learned counsels of both the sides and also perused the evidence available on record, my findings with reasons are as follows:

6) PW1 Eliza Begum stated in her evidence that she knows the informant as well as the accused person. Both of them are husband and wife. She further deposed that her house is situated near the house of the accused person. She further deposed that about one year ago at about 1 to 2 p.m, she heard hue and cry in the house of the accused person and she came out of the house and heard that an altercation took place between the family members of both informant and the accused person.

7) During cross-examination PW1 deposed that she had no knowledge prior to the incident.

8) PW2 Monoj Basfor deposed that he knows the informant. He also knows the accused person. His house is situated in front of the house of the accused person. On the day of occurrence he was inside his house and upon hearing hue and cry, he came out of the house and saw the family members of the informant verbally stating that they would not allow their daughter to die as there was drain, sweeper colony and post mortem office situated near the house of the accused person.

9) During cross-examination PW 2 deposed that he has not seen any quarrel between the informant and the accused person prior to the incident. The family members of the informant asked him to keep their daughter at a rented house either at Rangia or Guwahati.

10) PW3 Dr. Padmeswar Kalita deposed that on 02.02.2017 he was working as Sr. M&H.O, at SMK Civil Hospital, Nalbari and at about 4:19 p.m, he had examined the informant Nigar Sultana aged about 30 years, C/O Mr. R. Ahmed of Santipur Hili Side, under Bharalumukh, escorted by U.B.C., 492 Mr. Kanu Sarma in connection with Nalbari P.S. Case No. 61/17 vide OPD No. 2116/17. On examination he found :- (I)

Multiple superficial scratch mark over the right and left forearm anteriorly and laterally, (ii) tenderness over the anterior chest wall, (ii) headache. Investigation was not advised. Nature of injury simple. Age of injury fresh. Injury caused by blunt weapon. In his opinion the injury is simple and caused by blunt object. Exhibit 2 is the injury report and Exhibit 2(1) is his signature.

11) During cross-examination PW 3 deposed that the injury could be sustained due to fall over rough surface/ object.

12) PW4 Nigar Sultana who is the informant deposed in her evidence that she lodged the ejahar against her husband. She got married with the accused Mustadur Rahman in the year 2016 as per Muslim 'Sariyat'. After marriage the accused person demanded dowry articles from her parents. On 02.02.2017, the accused person confined her in a room and threatened to kill her if she informed her parents about the same. Her family members rescued her in an injured condition. On 03.02.2017, the accused person withdrew money from her ATM. In this regard she lodged ejahar against the accused person. Exhibit 3 is the FIR and Exhibit 3(1) is her signature.

13) PW 4 during her cross-examination denied the suggestion put forwarded by the defence counsel that the accused person lived at a rented house. She stated that she had submitted the mini statement of her ATM card and the ATM CD. Furthermore, Ld. Defence counsel put many suggestions to this witness, which she denied.

14. CW1 Hazarat Ali in his evidence deposed he knows the informant as well as the accused person. He further deposed that the occurrence took place about one and a half years ago. He deposed that the informant got married to the accused person but misunderstanding took place between both of them. He further deposed that the family members of the informant came to the house of the accused person and took away the 'stridhan' articles of the informant from their house.

15. During cross-examination CW1 deposed that though he is the neighbor of the accused person but he did not heard any quarrel between both the parties. He further deposed that when he discussed the matter with the family members of the informant, then their family members stated that if the accused person would keep the informant

outside Nalbari, only then marriage will be sustained.

16. PW5 Joopi Bordoloi (I.O) deposed that on 02.02.2017, she was working as DSP (Probationer) at Nalbari. On that day, on the basis of information given by one Rafiq Ahmed GDE No. 56 dated 02.02.2017 at 7:15 p.m., was entered in the General Diary of Nalbari P.S. Later on, Nigar Sultana filed an FIR and on the basis of the FIR Nalbari P.S. Case No. 61/2017 u/s 498(A)/342/379/34 IPC was registered and she took the task of investigation. She visited the place of occurrence and drew sketch map. She sent the victim to medical on police escort and collected the medical report of the victim from medical. She also recorded the statement of victim and recorded the statement of the witnesses at the place of occurrence. She further deposed that she seized some original certificate belonging to the informant in the presence of witnesses. The accused was given notice and accordingly he appeared before her. She recorded his statements and allowed him to go on bail. Upon completion of investigation he filed charge sheet against the accused Mustadur Rahman u/s 498(A) IPC. Exhibit 1 is the seizure list and Exhibit 1(2) is her signature. Exhibit 5 is the charge-sheet and Exhibit 5(1) is her signature.

17. During cross-examination PW5 deposed that the informant Nigar Sultana did not stated before her regarding the dowry specifically and she also did not stated before her that the accused wrongfully confined her at his residence. She also deposed that the informant did not stated before her that the accused assaulted her due to which she sustained injury and the accused broke the 'godrej' and took away the golden ornaments and wearing apparels. She denied that she did not investigated the case properly.

18. These are the materials on record.

19. I have carefully perused the evidence on record.

20. Section 498(A) IPC read as follows : Husband or relative of husband of a woman subjecting her to cruelty. - Whoever, being the husband or the 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 purposes of this section 'cruelty' means-

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

(b) harassment of the woman where such harassment is with a view to coercing her to 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.

21. The Hon'ble Supreme Court in **Smt. Raj Rani v. State (Delhi Administration) reported in AIR 2000 SC 3559** held that while considering the case of cruelty in the context to the provisions of section 498(A) IPC the Court must examine that allegations / accusations must be of a very grave nature and should be proved beyond reasonable doubt. Further, in another case **Girdhar Shankar Tawade vs. State of Maharashtra reported in AIR 2002 SC 2078**, the Hon'ble Supreme Court held that "cruelty" has to be understood having a specific statutory meaning provided in Section 498(A) IPC and there should be a case of continuous state of affairs of torture by one to another.

22. Taking note of the above judgments amongst others the Hon'ble Supreme Court in **Manju Ram Kalita v. State of Assam reported in 2009 (9)SCR 902** observed that "cruelty" for the purpose of sec. 498(A) IPC is to be established in the context of sec. 498(A) IPC as it may be different from other statutory provisions. It is to be determined / inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to continuously / persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as 'cruelty' to attract the provisions of Sec 498 (A) IPC.

23. To attract Sec 498(A) IPC the prosecution has to establish the willful conduct on the part of the accused and that conduct is of such a nature as is likely to drive the wife to commit suicide. In any event the

willful act or conduct ought to be the proximate cause in order to bring home the charge under Section 498(A) and not *de-hors* the same. To have an event sometime back cannot be termed to be a factum taken note of in the matter of a charge under Section 498(A) IPC. Mere demand of dowry or money raised by the accused is not an offence under 498(A) of the IPC, but the prosecution is further obliged to prove that the accused used to torture and harass the victim, which constitute cruelty for satisfying the demand of dowry / money. Unless the above ingredients are fully satisfied, the offences charged could not be said to have been made out. The legislative intent is clear enough to indicate in particular reference to explanation (b) that there shall have to be a series of acts in order to be a harassment within the meaning of explanation (b).

24. Now, let us see whether the prosecution has been able to bring home the guilt of the accused person beyond all reasonable doubt. Let us appreciate the evidence on record. PW1 Eliza Begum and PW2 Monoj Basfor does not have any knowledge about the incident, They only heard that an altercation took place between the family members of the informant and the family members of the accused person on the day of occurrence. PW 3 Dr. Padmeswar Kalita (M.O) had examined the informant and found Multiple superficial scratch mark over the right and left forearm anteriorly and laterally, (ii) tenderness over the anterior chest wall and (iii) headache. In his opinion injury was simple and caused by blunt object. PW 3 in his cross-examination deposed that the injury could be sustained due to fall over rough surface/ object. PW4 Nigar Sultana who is the informant stated in her evidence that after the marriage the accused person demanded dowry articles from her parents and on 02.02.2017 the accused person confined her in a room and threatened to kill her if she informed her parents and that her family members had rescued her in an injured condition. Moreover, the prosecution has failed to examine the parents of the victim. In the instant case, the prosecution examined three numbers of independent witness, but none of them supported the prosecution case.

25. On appreciation of the testimony of witnesses and the materials available on record, I find that the prosecution has failed to establish

the essential ingredients so required to constitute the charged offence beyond reasonable doubt by leading clear, cogent & convincing evidence.

26. The accused Mustadur Rahman is found not guilty u/s 498(A) IPC and hence, acquitted and set at liberty forthwith. Bail bond shall remain in force for a further period of six months.

27. Given under my hand and seal of this court on this 18th day of June, 2020.

**(Sri. K. C. Boro)**

**Chief Judicial Magistrate  
Nalbari.**

**APPENDIX:**

**Witnesses for the prosecution**

PW.1 - Eliza Begum,

PW.2 - Monoj Basfor,

PW.3 - Dr. Padmeswar Kalita (M.O),

PW.4 - Nigar Sultana (informant / victim),

PW.5 - Joopi Bordoloi (I.O),

**Witnesses for the defence**

None

**Prosecution Exhibits**

Exhibit 1 - Seizure list,

Exhibit 1(1) - Signature of seizure witness Hazarat Ali,

Exhibit 1(2) - Signature of I.O,

Exhibit 2 - Injury report,

Exhibit 2(1) - Signature of M.O,

Exhibit 3 - Ejahar,

Exhibit 3(1) - Signature of the informant,

Exhibit 4 - Statement of victim u/s 164 CrPC,

Exhibit 4(1) - Signature of victim,

Exhibit 4(2) - Signature of victim,

Exhibit 4(3) - Signature of victim,

Exhibit 4(4) - Signature of victim,

Exhibit 4(5) - Signature of victim,

Exhibit 5 - Charge sheet,

Exhibit 5(1) - Signature of I.O.

**Defence Exhibits**

None

**Court Witness :**

CW.1 - Hajarat Ali,

**Court Exhibits :**

None

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