

IN THE COURT OF ADDL. C.J.M :::::::::::::::::::::NALBARI

Present: *Sri Jayanta Kumar Saikia,*
Addl. CJM, Nalbari.

(Date of judgment: 24/02/2022)

(P.R.C. No. 1282/2019)

u/s 498(A) of IPC.

INFORMANT:	Musstt. Mousumi Begum
REPRESENTED BY	Sri. Arjun Barman, Ld. APP
ACCUSED	Md. Jakir Hussain
REPRESENTED BY	Md. Rejaul Karim, Ld. Advocate
Date of PW evidence	02/01/2020, 21/10/2021 & 06/01/2022
Date of Argument	17/01/2022
Date of Judgment	24/02/2022

Accused details

Rank of the	Name of the	Date of	Date of	Offences charge	Whether acquitted	Sentence imposed	Period of detention
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accused	accused	arrest	release on bail	with	or convicted		under gone during trial for the purpose of section 428 of IPC
A-1	Md. Jakir Hussain			U/S 498(A) of IPC			

APPENDIX-13

Date of offence	Since 3 months from filing of FIR
Date of FIR	18/05/2019
Date of charge-sheet	25/05/2019
Date of framing of charges	16/11/2019
Date of commencement of evidence	02/01/2020
Date on which judgment is reserved	21/01/2022, 29/01/2022, 08/02/2022, 17/02/2022 & 24/02/2022
Date of judgment	24/02/2022
Date of the Sentencing Order, if any	N/A

(J U D G M E N T)

- 1.** The prosecution case sets into motion by filing a FIR by the informant, Musstt. Mousumi Begum stating that accused Md. Jakir Hussain is her husband. Before three months of filing the FIR she did registry marriage with the accused. The accused tortures her mentally and physically since the marriage and also tried to kill her. Hence, she has lodged this case.
- 2.** On receipt of the same, the O/C, Belsor P.S., Nalbari for registering a case under proper section of law. The Officer-in-charge, Belsor Police station, on receipt of the Ejahar registered Belsor P.S. Case No. 108/2019, under section 498(A)/323 of IPC and endorsed the concerned I/O for investigation. After completion of the investigation, the concerned I/O submitted charge sheet against the accused person, Md. Jakir Hussain under Section of 498(A) of IPC.
- 3.** In due course, the accused person appeared before the Court and the copies of relevant documents were furnished to him as per section 207 of CrPC. Having found a prima facie case against the accused person, the charge is framed, under Section 498(A) of IPC against the accused person, which is read over and explained to him vide order dated 16.11.2019, to which he pleaded not guilty and claimed to be tried.

4. The prosecution side examined five (05) witnesses. As per the submission of Ld. Assistant Public Prosecutor, further evidence of prosecution side was closed. The statement in defence of the accused person u/s 313 of the Code of Criminal Procedure was recorded. Defence side examined no witnesses. I have heard the arguments advanced by the Ld. Counsels for both sides.

5. POINTS FOR DETERMINATION:-

(i) Whether the accused person, since three months prior to filing of the FIR, at Sukekuchi Baruahkur under the jurisdiction of Belsor P.S. being the husband of the informant Musstt. Mousumi Begum subjected her to cruelty and also tried to kill her and thereby committed the offence under section 498(A) of IPC ?

EVIDENCES OF PWs

6. PW1 Musstt. Mousumi Begum deposed that she is the informant. She filed the ejahar against her husband Jakir Hussain and Rohuddin who is the brother of his earlier wife. She was married to Jakir Hussain 01-03-2019. After marriage she went to her matrimonial house. She resided with her husband for about 3 months. The accused persons demanded Rs. 1/- lakh from her and used to tell her that the stridhan articles are of inferior quality and demanded new furnitures. Her father is a daily wage earner and he was not able to meet

the demand of the accused persons. On 10-05-2019 at about 11.30 pm the accused persons pressed her face with a pillow and on 18-05-2019 at about 11.30 am poured kerosene over her body and drove her out of her matrimonial house to bring Rs. 1/- lakh from her parents. She came to Belsor P.S. and filed the ejahar. Police sent her to Belsor medical for treatment. She is residing with her father Md. Moinul Ali. Exhibit 1 is the ejahar and exhibit 1(1) is her signature. During cross-examination this witness deposed that Jakir Hussain married her after the death of his first wife Sahida Begum in a motor accident. Jakir Hussain has two children out of his wedlock with his first wife. She was earlier married to Akhtar Hussain prior to marriage with Jakir Hussain and she resided for about 2 months with Akhtar Hussain. She married Jakir Hussain after obtaining talaq from Akhtar Hussain. Jakir Hussain did not demanded any money or other articles on the day of her marriage with him. On the southern side of the house of Jakir Hussain there are houses of many other persons. Her parental house is about 3 kilometers from the house of Jakir Hussain. There are houses of many other persons near her parental house. She denied defence suggestion that she did not stated before police that the accused persons demanded Rs. 1/- lakh from her and used to tell her that the stridhan articles are of inferior quality and demanded new furnitures. She admitted that she did not stated before police that on 10-05-2019 at about 11.30 pm

the accused persons pressed her face with a pillow and on 18-05-2019 at about 11.30 am poured kerosene over her body and drove her out of her matrimonial house to bring Rs. 1/- lakh from her parents. She denied defence suggestion that she is deposing falsely that on 10-05-2019 at about 11.30 pm the accused persons pressed her face with a pillow and on 18-05-2019 at about 11.30 am poured kerosene over her body and drove her out of her matrimonial house to bring Rs. 1/- lakh from her parents. She denied defence suggestion that she used to tell Jakir Hussain to drive out his two childrens. She did not sustained any external injuries . She denied defence suggestion that she is deposing falsely and filed a false case against Jakir Hussain.

- 7.** PW2 Musstt. Ramena Begum deposed that she knows the informant. She is her neighbor. She knows the accused, he is also her neighbor. She knows the informant is wife of the accused person. She does not know what happened between them. She was staying at Guwahati. Police never recorded her statement. Defence declined to cross-examine this witness.
- 8.** PW3 Musstt. Azmina Begum deposed that she does not know the informant. She knows the accused person. He is her co-villager. She knows that he married to a women namely Mouchumi. She does not know anything regarding this case. She has never have stated anything before the police in connection with this case. Defence declined to cross-examine this witness.

9. PW4 Dr. Bandana Sarma deposed that on 17.05.2019 she was on duty as M.O., M.G.M.H., Belsor. On that day at 1:55 P.M., she examined Musstt Mousumi Begum, D/O Md. Mainul Ali, Resident of Solmari, Bhaira, Belsor, escorted by WSI(P) Smti Pronita Taid, Belsor P.S., in connection with Belsor P.S. Case No. 108/19 U/S 498(A)/323 IPC and on examination history of physical assault on 17.05.2019 at 11:00 A.M. She found no injury seen at the time of examination. Opinion: No injury seen at the time of examination. Exhibit 2 is the medical report. Exhibit 2(1) is her signature. Defence declined to cross-examine this witness.

10. PW5 Smti Parismita Gogoi deposed that on 18.05.2019 she was on duty as S.I.(P) at Belsor P.S. On that day informant namely Musstt Mousumi Begum lodged one FIR against her husband Md Jakir Hussain and relative Md. Rahiuddin at Belsor Police Station. On receipt of the same, O/C Belsor Police Station registered Belsor P.S. Case No.108/19 U/S 498(A)/323 IPC and endorsed her for investigation of the case. She has recorded the statement of the informant at the police station U/S 161 Cr.P.C. Already on 17.05.2019 itself the victim was medically examined under police escort. Thereafter, she visited the place of occurrence. She prepared sketch map. Exhibit 3 is the sketch map. Exhibit 3(1) is her signature. She has recorded statements of witnesses namely Musstt. Asmina Begum and Musstt. Ramena Begum U/S 161 Cr.P.C. The accused surrendered before her at the police

station on 20.05.2019 and she has recorded his statement. Thereafter, he was released as per section 41(A) clause I of Cr.P.C. She has collected the medical report on 21.05.2019. Thereafter, she found prima facie case against the accused person Md. Jakir Hussain and submitted charge sheet no. 55/19 dated 25.05.2019 U/S 498(A) of IPC against the accused Md. Jakir Hussain. Exhibit 4 is the charge sheet. Exhibit 4(1) is her signature. During cross-examination this witness deposed that the medical examination was done on 17.05.2019. It is mentioned in the injury report that victim was examine in reference to Belsor P.S. Case no 108/2019 U/S 498(A)/323 IPC. The FIR was receipt on 18.05.2019. The case was registered on 18.05.2019. There was no GD entry in respect of medical examination conducted on 17.05.2019 as per the CD. The victim was not referred to Family Welfare Committee as per the Judgment of Rajesh Sarma vs. State of UP. No specific date of alleged occurrence is mentioned. Exhibit 3 i.e., sketch map reveals house of Md. Jakir Ali. Exhibit 3 i.e., sketch map does not reveal that house of Musstt. Ramena Begum is not situated near the place of occurrence. She has not recorded statements of the family members of the victim in connection with this case. PW1 Musstt Mousumi Begum has not stated before her in the statement recorded U/S 161 Cr.P.C. that the accused person demanded Rs. 1 lakh from her and use to tell her that the stridhan articles are of inferior quality and demanded new

furniture. In her statement recorded U/S 161 Cr.P.C. PW1 did not state before her that the accused person demanded her any dowry. She denied defence suggestion that she has not investigated the case properly.

DISCUSSION, DECISION AND REASONS THEREOF:

- 11.** The evidence of PW1 i.e., the informant of the case reveals that she was married to Jakir Hussain on 01.03.2019. Regarding the relationship of the accused with the victim/PW1 no dispute has been raised by the defence side. It is a fact that after marriage she went to her matrimonial house and Jakir Hussain has two children out of his wedlock with his first wife. It is also found that victim/informant (PW1) was married to Akhtar Hussain prior to marrying Jakir Hussain. After obtaining talaq from Akhtar Hussain she married Jakir Hussain. During cross-examination the defence side was able to bring out that Jakir Hussain did not demand any money or other articles on the day of the marriage with him. During cross-examination PW1 stated that she had not sustained any external injuries. From the cross-examination of the PW5 (I/O) it is found that PW1 (informant/victim) had not stated before her in the statement recorded U/S 161 Cr.P.C. that the accused demanded Rs. 1 lakh from her and use to tell her that the stridhan articles are of inferior quality and demanded new furniture. From the evidence of PW5 (I/O) and the evidence of PW1 (victim/informant) it is found that there are

major contradiction in the evidences of the victim (PW1) and the I/O (PW5). It is also found that regarding the allegations made against the accused person by PW1 in her testimony were also not stated before the I/O. Hence, in my considered opinion the evidence of PW1 has to be appreciated with precaution and it requires corroboration. But the evidence of PW2 and PW3 clearly shows that they do not have any knowledge of the alleged incident.

12. The evidence of PW4 (MO) also shows that no injury was seen at the time of examination done by her.

13. Hence, from the evidence on record, I am of the considered opinion that the prosecution side has failed to produce cogent, trustworthy and credential evidences against the accused person that he has committed offence U/S 498(A) of IPC.

ORDER

In the light of aforesaid discussions and reasons, it is seen that the prosecution side failed to prove the guilt of the accused person.

Accordingly, the accused person, Md. Jakir Hussain is acquitted from the offence under section 498(A) of IPC and he is set at liberty forthwith.

The bail bond of the accused person and his surety shall remain in force for a period of 6 months from today as per amended CrPC.

Given under my hand and seal of this court on this 24th day of February, 2022.

Sri Jayanta Kumar Saikia
Addl. Chief Judicial Magistrate
Nalbari

APPENDIX-14

LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES

A. Prosecution witness

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Musstt. Mousumi Begum	Informant
PW-2	Musstt. Ramena Begum	Other witness
PW-3	Musstt. Azmina Begum	Other witness
PW-4	Dr. Bandana Sarma	Medical witness
PW-5	Smti Parismita Gogoi	Police witness

B. Defence witnesses, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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C. Court witnesses, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS,
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		MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Exhibit 1	Ejahaar
2	Exhibit 2	Medical report
3	Exhibit 3	Sketch map
4	Exhibit 4	Charge sheet

B. Defence: NOT APPLICABLE

Sr. No.	Exhibit Number	Description
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C. Court Exhibits: NOT APPLICABLE

Sr. No.	Exhibit Number	Description
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D. Material Objects: Not applicable

Sr. No.	Exhibit Number	Description
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Sri Jayanta Kumar Saikia
Addl. Chief Judicial Magistrate
Nalbari