

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

Present : *Sri Rahul Medhi*
Asstt. Sessions Judge,
Nalbari

(Date of Judgment: 26-09-2022)

(Sessions Case No. 30/2021)

(Details of FIR/Crime: 34/2021 and Police Station: Mukalmua)

COMPLAINANT	STATE OF ASSAM
REPRESENTED BY	Mr. Mrigen Das, Addl.P.P.
ACCUSED	A1- Md. Kasim Ali
REPRESENTED BY	Mr. B. Haque & K. Devi

Date of Offence	25/01/2021
Date of FIR	26/01/2021
Date of Charge-sheet	27-02-2021
Date of Framing Charge	31/03/2021
Date of commencement of evidence	09/11/2021, 05/05/2022 & 15/07/2022
Date on which judgment is reserved	Nil
Date of Judgment	26-09-2022
Date of sentencing order, if any	Nil

Accused details

Rank of the accused	Name of the accused	Date of arrest	Date of release on bail	Offences charge with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for the purpose of section 428 of IPC
A-1	Kasim Ali	19/01/2021	21-05-2021	498-A/307/323 of IPC	Acquitted	Nil	4 Months 2 days

J U D G M E N T

1. The prosecution case, in brief, is that on 26/01/2021 the informant, Musstt. Manju Begum lodged a FIR before Mukalmua PS alleging inter alia that she was married to accused Kashim Ali. After 11 months of the marriage, the accused Md. Kashim Ali along with his brothers Md. Rahim Ali and Md. Usub Ali and his parents Md. Rahman Ali and Musstt. Fulo Bibi started subjecting her to physical and mental cruelty. They demanded her money and when she failed to bring the same from her parents, they tortured her. On the previous day of her marriage, her husband the accused, Md. Kashim Ali took Rs.2 lacs from her father. After their engagement, the accused refused to marry her prior to two days of their marriage, so her father had to pay him the aforesaid money.

She further alleged that her husband/the accused had illicit relationship with another girl even after their marriage and he used to have telephonic conversation with her till late night. She further alleged that on 25/01/2021 at 8:00 am, when she was pregnant of seven months, the accused, Kashim Ali along with his brothers Md. Rahman Ali and Md. Usub Ali and his parents Md. Rahman Ali and Musstt. Fulo Bibi tried to murder her by putting her ablaze after pouring kerosene oil to her person. But she somehow saved her life from the clutches of the accused persons. Hence, this case.

2. The FIR was registered as Mukalmua PS Case No.34/2021 u/s-498(A)/307/34 of IPC. During investigation stage accused was arrested and he was later on released on bail. After completing the investigation, the I/O submitted charge-sheet against the accused u/s-498(A)/323/307 of IPC. The case was committed to the court of Sessions by learned Addl. Chief Judicial Magistrate, Nalbari. Later on the case was transferred to this court. The accused persons appeared and formal charge was framed against him u/s-498(A)/323/307 of IPC.

3. During trial prosecution examined as many as five witnesses including informant/victim. Prosecution evidence was closed. Defence did not lead any evidence. The statement of the accused u/s-313 CrPC is recorded. I have heard arguments from both sides and framed the following point for determination.

4. The following point for determination is framed in this case :-

POINTS FOR DETERMINATION:-

(I) Whether the accused person being the husband of victim, Musstt. Manju Begum subjected the victim woman to cruelty on account of dowry and cash and thereby committed an offence punishable u/s-498(A) of IPC ?

(ii) Whether the accused person on 25/01/2021 at about 8:00 am in his house at village Barnibari under Mukalmua PS, voluntarily caused hurt to victim Musstt. Manju Begum and also poured kerosene oil on her with an intention to set her ablaze and committed that act with such intention or knowledge and under such circumstances that if by that act the accused had caused the death of Musstt. Manju Begum the accused would have been guilty of murder and thereby committed an offence punishable under section 307 of IPC ?

(iii) Whether the accused on the same date, time and place in his house at village Barnibari under Mukalmua PS, voluntarily caused hurt to the victim Musstt. Manju Begum and thereby

committed an offence punishable under section 323 of IPC ?

PROSECUTION'S EVIDENCE

5. I have scrutinized the evidence on record. Now to arrive at a judicious decision let me discuss and appreciate the testimonies of the witnesses. First of all let me discuss the evidence of PW-1, **Musstt Manju Begum** who is the informant cum victim of this case narrated during her evidence that she was married to the accused as per Islamic rites and rituals on 12/03/2020. Thereafter, she started residing with him as husband and wife at her matrimonial house. After 11 months of the marriage, the accused Md. Kashim Ali along with his brothers Md. Rahim Ali and Md. Usub Ali and his parents Md. Rahman Ali and Musstt. Fulo Bibi, started subjecting her to physical and mental cruelty. They demanded her money and when she failed to bring the same from her parent, they tortured her. On the previous day of her marriage, her husband/accused Md. Kashim Ali took Rs. 2,00,000/- (two lakhs) from her father. After their engagement, the accused refused to marry her prior to two days of their marriage, so her father had to pay him the aforesaid amount. Her husband/ accused continued illicit relationship with another girl even after their marriage. He used to have telephonic conversation with her till late night and she doesn't know her name. On 25/01/2021 at 8:00 AM, when she was pregnant of seven months, the accused person

along with his brothers Md. Rahim Ali and Md. Usub Ali and his parents Md. Rahman Ali and Musstt. Fulo Bibi attempted to murder her by putting her ablaze after pouring kerosene oil on her person. She fled away from the place of occurrence and took shelter at her parental house. On the same day of the incident, she lodged the instant case at Mukalmua Police Station. She exhibited the FIR as Ext. 1. The police recorded her statement and escorted her to Mukalmua PHC for medical examination. At present, she is residing at her parental house. The police also seized the *Mexi* which she was wearing at the time of occurrence, on which the accused persons poured kerosene oil during investigation. Material Ext-A is the aforesaid *Mexi* which is produced before the court today. She exhibited the seizure list as Ext-2 vide which the Material Ext-A was seized.

During cross-examination she stated that the distance between her parental house and matrimonial house is one hour on foot and 15 to 20 minutes by vehicle. The houses of neighboring people are congested and adjacent to her matrimonial house i.e. the place of occurrence. She doesn't know the neighboring people. She never informed them about the physical and mental torture she was alleged to be subjected to. Prior to 25/01/2021, she did not file any *ejahar* against her husband. Her parent sent her to have a matrimonial life with the accused, so she tolerates it. She informed her father about the alleged tortures she was

subjected prior to lodging the FIR. Her father has not lodged any case against the accused person. Her father has not lodged any case against the accused person regarding the payment of Rs. 2,00,000/- to the accused person. The FIR i.e. Ext-1 was prepared at the police station. She knows the content of the FIR i.e. Ext-1. On 20/01/2021, the accused assaulted her demanding money too. She admitted that she has not mentioned in details how the accused committed alleged offence of pouring kerosene oil to her and tried to put her ablaze on 25/01/2021 in her FIR i.e. Ext-1. Her father had good relationship with the accused person prior to the alleged incident took place on 25/01/2021 and he used to visit her matrimonial house. She has handed over Material Ext-A i.e. the Mexi to the police.

6. **PW-2 Md. Rajat Ali** during his evidence in-chief stated that the informant is his daughter. The accused, Md. Kashim Ali is his son-in-law. The informant and accused married about 1 ½ years back socially. Prior to the marriage ceremony, after the engagement, the accused refused to marry his daughter/ informant. He sold a plot of land and delivered the accused an amount of Rs. 2,00,000/- (two lakhs) on the previous day of the marriage. Thereafter, he agreed to marry his daughter. After a few months of the marriage, the accused, his parents and his brothers, namely, Usub Ali and Rahim Ali started subjecting the informant to

mental and physical torture. His daughter/ informant informed him about the happenings and he used to make visit to her matrimonial house. But they did not treat him well. When his daughter was pregnant of seven months, the accused person along his parents, Rahman Ali and Fulo Bibi and elder brothers, namely, Rahim Ali and Usub Ali poured kerosene oil on the cloth of his daughter/informant to put her ablaze. She fled and came to his house. Since then, his daughter has been residing with him. The police seized the mexi, the informant/victim was wearing at the time of occurrence by preparing seizure list. He put his signature as a seizure witness on the seizure list. He exhibited the seizure list as exhibit-2.

During cross-examination he stated that he has witnesses when he delivered the amount Rs. 2,00,000/- to the accused. He has not lodged any FIR regarding the delivery of aforesaid money prior to lodging this FIR. After the marriage, the accused and the informant/his daughter lived merrily for a few months. He has informed the neighboring people of the locality of the matrimonial house of his daughter regarding the alleged incident. He doesn't know their names. He has not submitted any written complaint to the village committee against the accused person. He admitted that he has not stated to police that his daughter/ informant informed him about the happenings and he used to make visit to her matrimonial house, but they did not treat him well. On

25/01/2021, at the time of alleged occurrence, he was at his residence. When his daughter/ informant fled to his house from the alleged place of occurrence on 25/01/2021, informed him about the alleged incident, then only he came to know about the alleged incident. He cannot remember the exact date and time of other alleged incidents took place subjecting his daughter to cruelty. Prior to the alleged occurrence, he visited informant's matrimonial house and discussed the matter with the family members of the accused in the dock. He has never taken his daughter back to his house himself prior to the incident on 25/01/2021 when she fled to his house. He cannot say the content of the Ext-2 i.e. Seizure List.

7. **PW-3 Md. Majibar Ali** deposed that the informant is his sister. The accused, Md. Kashim Ali is her husband. The incident occurred about 1 ½ years back. Prior to the marriage ceremony, after the engagement, the accused refused to marry his sister/ informant. His father sold a plot of land and delivered the accused an amount of Rs. 2,00,000/- (two lakhs) on the previous day of the marriage. Thereafter, he agreed to marry his sister. After about six months of marriage, accused Kashim Ali demanded dowry from his sister/ informant. On failure on her part to meet their demand, the accused subjected her to torture. Accused Kashim Ali, Usub Ali, Rahman Ali, Rahim Ali and Fulo Bibi poured kerosene oil on the person of his sister and tried to

put her ablaze after about six months of the marriage. His sister/the informant somehow rescued herself and took shelter at their house. Since then, she has been residing at their house. The police seized the mexi i.e. Material Ext- A, which was worn by his sister at the time of occurrence by preparing seizure list. He put his signature as a seizure witness.

During cross he stated that whatever he has deposed today regarding alleged tortures his sister was subjected to, was informed to him by his sister over phone. About the alleged incident took place on 25/01/2021, he came to know when his sister informed him. Regarding the fact that his father sold a plot of land and delivered the accused an amount of Rs. 2,00,000/- (two lakhs) on the previous day of the marriage, they never lodged any FIR prior to this case. Regarding the other allegation also, they never lodged any FIR prior to this case. The police seized the Material Ext- A i.e. the Mexi from his hand at the police station. At the time of seizure, the informant, his father, he and his Vindeo (Khalil Ali) were present.

8. **PW-4 Dr. Dikshita Medhi** deposed that On 25/01/2021, she I examined Miss Manju Begum at 5:10. At that time, Miss Manju Begum was at the age of 20 years, female, D/o- Md. Rajat Ali, of village- No 2 Joysagar, PS- Mukalmua, Dist- Nalbari was escorted by HG Safikul Ali in connection with ref. Mukalmua PS Case no. 34/2021 u/s

498A/307/349 IPC.

Nature of Injury-

Physical assault at around 10 AM on 20/01/2021. Bleeding from nose. No external injury. At time of examination, the victim was pregnant of approx. 6 months.

Opinion:-

Simple injury. Advised to ENT consultant.

She Exhibited the medical certificate Exhibit-P-3/PW-4.

During cross-examination she admitted that It is a fact that the bleeding from nose as mentioned by her may be due to fall.

9. **PW-5 Md. Maksed Ali (I/O)** in his evidence in-chief deposed that on 25/01/2021 he was posted at Mukalmua PS as Sheristadar. On the day receiving a FIR, the then OC registered a case as Mukalmua PS Case No.34/2021 u/s-498-A/307/34 of IPC and entrusted him with the investigation. The FIR was lodged by Manju Begum against the accused persons, Kashim Ali, Rahim Ali, Usup Rahman and Fulo Bibi. Then finding the informant in the police station, he recorded her statement. He found that the cloth of the informant was drenched with kerosene which was seized. Thereafter, he recorded the statement of Rajat Ali, father of the informant and Majibar Ali, brother of the informant and on the same day, he proceeded to the place of occurrence and prepared a sketch map and recorded statement of the witnesses there and searched for the accused persons but could not

apprehend them on that day and returned on 15/02/2021. He collected the medical report of the victim/ informant. On 19/02/2021, he found the accused person, Kashim Ali in his house and brought him to the PS and recorded his statement. After finding materials against the accused Kashim Ali, he forwarded the said accused Kashim Ali to the court. After completion of the investigation, having found sufficient materials against the accused, Kashim Ali, he submitted charge-sheet against the said accused u/s-498-A/307 of IPC vide C/S No.29/2021 dated 27/02/2021. He exhibited the sketch map as Exhibit-P-4/PW-5.

During cross-examination he stated that he reached the place of occurrence at 2:25 pm. The victim did not accompany them to the place of occurrence. He had never taken the victim to the place of occurrence. He prepared the sketch map as per the knowledge acquired from the witnesses at the place of occurrence. He did not seize any kind of container containing kerosene from the place of occurrence. He seized the mexi of the victim from the victim in the police station and the said mexi was not sent to FSL. The village of the accused is thickly populated. The occurrence took place at around 8:00 am. PW-5 admitted that PW-2 Rajat Ali in his statement before him had not stated that on his visit to the house of the accused on several times, he was misbehaved with by the family members of the accused. He also admitted that PW-2 Rajat Ali in his

statement before him has not stated that when his daughter was 7 months pregnant, the accused, Kashim Ali, Rahman Ali, Fulo Bibi, Rahim Ali and Usuf Ali poured kerosene oil on her to put her ablaze. He further deposed that PW-2 Rajat Ali in his statement before him had not stated the name of other accused except Kashim Ali about mentally and physically torturing the victim with demand of dowry.

DISCUSSION DECISION AND REASONS THEREOF

10. From the evidence as discussed above, it appears that PW-1 informant/victim in her evidence has stated that she was married to accused Kashim Ali on 12/03/2020 and since then she had been residing with the accused as husband and wife at her matrimonial house and after 11 months of their marriage, the accused stated subjected her mental and physical torture demanding dowry. It is also evident from PW-1 that an amount of Rs.2 lacs was paid to the accused Kashim Ali by her father on the day before the marriage as Kashim Ali refused to marry her and it is further evident from the evidence of PW-1 that accused Kashim had illicit relation with another girl with whom he used to have telephonic conversation till late night. But PW-1 does not know her name and on 25/01/2021 at about 8:00 am, the accused attempted to murder her by pouring kerosene over her to set her on fire. When she fled to her paternal house and lodged a FIR with the Mukalmua Police Station. It is also evident that the Mexi worn by her was seized by police.

11. The other Pws has supported the PW-1. However, there is no any independent witnesses to prove that the informant/victim had been subjected to mental and physical torture by her husband, the accused Kashim Ali. Further it is also doubtful that PW-1 went to her paternal home which takes around one hour on foot and none of the neighbouring people adjacent to her maternal house had seen the occurrence taking place. It is also clear from the evidence of PW-1 that she had never informed any people from neighbour and she knew no one from neighbouring houses. It is also clear from the evidence that the father of the PW-1, Md. Rajat Ali had made a payment of Rs.2 lacs to the accused on demand which was not reported to police and the medical report given by PW-4 suggested that there is no any external injury except bleeding nose. Further, it is doubtful as to the alleged assault by the accused on the PW-1 as there is no any independent witness and the I/O has failed to examine any independent witness from the place of occurrence. Further it is doubtful as to the happening of the incident as the victim/PW-1 went to her paternal home on the day of the incident which is at a distance of one hour on foot and no one had seen her running to save her life as it is evident from the evidence of PW-2 that the houses near the house of the accused are congested but the I/O failed to examine any of the person from the neighbouring houses. Accordingly, from the evidence, it is doubtful regarding the offence that has

been alleged.

12. The prosecution has miserably failed to prove the offence u/s-498-A/307/323 of IPC against the accused. Point for determination is decided in negative.

13. The accused person is facing trial under section 498-A/307/323 of IPC and from the evidences on record, there is no hint of allegation found against the accused person. In result, it is held that the prosecution has failed to prove the case beyond reasonable doubt. Accused Md. Kashim Ali is held not guilty u/s-498-A/307/323 of IPC and he is acquitted. Accused is set at liberty forthwith. Surety stands extended for next six months.

14. Judgment is delivered in the open court. Case is disposed of on contest.

Given under the hand and seal of the court on this the **26th day of September, 2022.**

Asstt. Sessions Judge,
Nalbari.

Dictated and corrected by

Asstt. Sessions Judge,
Nalbari.

D. Roy (Stenographer Grade-11)

APPENDIX-14

LIST OF PROSECUTION/DEFENCE/COURT WITNESS

A. Prosecution Witness:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Musstt. Manju Begum	INFORMANT/ VICTIM
PW2	MD. Rajat Ali	OTHER WITNESS
PW3	Md. Majibar Ali	OTHER WITNESS
PW4	Dr. Dikshita Medhi	MEDICAL WITNESS
PW5	Md. Maked Ali	POLICE WITNESS

B. Defence Witness, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MIDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW1		
DW2		

C. Court Witness, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MIDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW1		
CW2		

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution :

Sl No	Exhibit Number	Description
1	Exhibit P-1/PW-1	FIR
2	Exhibit-P-2/PW-2	SEIZURE LIST
3	Exhibit-P-3/PW-4	MEDICAL CERTIFICATE
4	Exhibit-P-4/PW-5	SKETCH MAP
5	Exhibit-P-5/PW-5	CHARGE-SHEET

B. Defence : NOT APPLICABLE

Sr. No.	Exhibit Number	Description
1.		
2		

C. Court Exhibits :NOT APPLICABLE

Sr. No.	Exhibit Number	Description
1		
2		

D. Material Objects : NOT APPLICABLE

Sr. No.	Exhibit Number	Description
1	Material Exhibit-A	MEXI

Asstt. Sessions Judge,
Nalabri.