

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

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

(Date of Judgment: 16-09-2022)

(Sessions Case No. 91/2019)

(Details of FIR/Crime: 27/2019 and Police Station:
Bhangnamari)

COMPLAINANT	STATE OF ASSAM
REPRESENTED BY	Mr. Mrigen Das, Addl.P.P.
ACCUSED	A.1- Md. Kamal Ali.
REPRESENTED BY	Mr. J. Ahmed.

Date of Offence	10-06-2019
Date of FIR	11-06-2019
Date of Charge-sheet	29-06-2019
Date of Framing Charge	29-07-2019
Date of commencement of evidence	03/09/2019, 04/03/2020 & 07/09/2022
Date on which judgment is reserved	Nil
Date of Judgment	16-09-2022
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	Kamal Ali	14/06/2019	10/07/2019	498(A)/316 IPC r/w Sec.4 of D.P. Act.	Acquitted		26 days

J U D G M E N T

1. The prosecution case, in brief, is that on 11/06/2019 the informant, Musstt. Chanmala Khatun lodged a FIR before Bhangnamari PS alleging inter alia that since one year from her marriage with the accused, Md. Kamal Ali, her husband, subjected her to cruelty by harassing her mentally and physically on her failure to meet the unlawful demand of dowry. It is further alleged that on 10/06/2019 the accused, Kamal Ali at about 6 pm assaulted her with a bamboo stick and caused death of the 3 months old foetus

which was a quick unborn child of the victim. She further alleged that on the same day accused Kamal Ali with the instigation of other accused persons, namely, Md. Manowar Ali and Jinnat Ali abused her with filthy language. Hence, this case.

2. The FIR was registered as Bhangnamri PS Case No.27/2019 u/s-498(A)/316 IPC r/w Sec.4 of D.P. Act. During investigation stage accused Kamal Ali 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)/316 IPC r/w Sec.4 of D.P. Act. The case was committed to the court of Sessions by learned Add. Chief Judicial Magistrate, Nalbari. Later on the case was transferred to this court. The accused appeared and formal charge was framed against him u/s-u/s-498(A)/316 IPC r/w Sec.4 of D.P. Act.

3. During trial prosecution examined only four witnesses including victim. Prosecution evidence was closed as there was no scope for improvement in the prosecution case. Defence did not lead any evidence. The statement of the accused u/s-313 CrPC is dispensed with. I have heard arguments from both sides and framed the following point for determination.

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

POINT FOR DETERMINATION:-

- (I) Whether the accused person since one year from his marriage with the victim/informant Chanmala Khatun has been subjected her to cruelty by harassing her mentally and physically on her failure to meet the unlawful demand of dowry made by the accused and thereby committed an offence punishable u/s-498(A) of IPC ?
- (ii) Whether the accused on 10/06/19 at about 6 pm at village Lowtolichar under Bhangnamari PS did an act, to wit by assaulting the victim/informant with a bamboo stick, sharp weapon and with the accused foot caused death of the 3 months old foetus which was a quick unborn child of the victim and thereby committed an offence punishable u/s-316 of IPC ?
- (iii) Whether the accused since one year from his marriage with the informant demanded dowry and a sum of Rs.20,000/- and thereby committed an offence punishable u/s-4 of D.P Act.

DISCUSSION DECISION AND REASONS
THEREOF

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-3 Musstt Chanmala Khatun who is the victim of this case narrated during her evidence that the accused persons, Kamal Ali is her husband. She was married to the accused two years back and after marriage, she started living with him as husband and wife. After marriage, the accused started demanding Rs.10,000/- as dowry and on being unable to fulfill his demand, the accused started assaulting her and torturing her mentally and physically. After that she unable to tolerate the torture she left for her maternal home and lodged this case.

During cross-examination she testified that she does not remember who has written the FIR and also does not know the content of the FIR. She also admitted that at the time of incident, the mother of the accused was ailing for which the accused asked for loan of Rs.10,000/- from her father and she has not mentioned about the same before the police. what she has stated in her statement u/s-164 CrPC. She further stated that she does not want to proceed with the case any further and she has no objection if the

accused is acquitted from this case.

6. Evidence of PW-4 father of the victim testified that informant is his daughter and accused Kamal Ali is his son-in-law. His daughter was married to accused Kamal Ali two years back and after marriage, she started co-habiting with him as husband and wife. After that, due to quarrels his daughter left for his home and lodged this case and presently she is staying with them.

During cross-examination he admitted that he knows nothing about the incident on his own and he does not want to proceed with this case any further and has no allegation against the accused.

7. PW-1 Md. Jabbar Ali disclosed in his evidence that he heard from his children that Kamal assaulted his wife. Thereafter, his parents came to Kamal's house and took her back along with them. He does not know why the accused assaulted his wife. His house is situated at a distance of 500 metres from the house of Kamal.

8. Now from the evidence of the victim and father of the victim, it is clear that the ingredient of section 498(A)/316 IPC r/w Sec 4 of D.P. Act is missing in this case. It is also found that the victim went voluntarily to her maternal home and presently, she is living with her parents peacefully. It is also found that presently

both the parties have no enmity. Hence, in my considered opinion, the case does not come under the purview of section 498(A)/316 IPC r/w Sec 4 of D.P Act.

9. The prosecution has miserably failed to prove the offence of assaulting against the accused. Points for determination is decided in negative.

10. The accused person is facing trial under section 498(A)/316 IPC r/w Sec 4 of D.P Act. 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. Kamal Ali is held not guilty 498(A)/316 IPC r/w Sec 4 of D.P Act of IPC and he is acquitted. Accused is set at liberty forthwith. Surety stands extended for next six months.

11. 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 **16ay of September,2022.**

Asstt. Sessions Judge,
Nalbari.

Dictated and corrected by

Asstt. Sessions Judge,
Nalbari.

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	Md. Jabbar Ali	OTHER WITNESS
PW2	Musstt. Rehena Begum	OTHER WITNESS
PW3	Musstt. Chanmala Khatun	VICTIM/INFORMANT
PW4	Md. Chan Mahaddad Ali	OTHER 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 :NOT APPLICABLE

Sl No	Exhibit Number	Description
1		
2		

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		

Asstt. Sessions Judge,
Nalabri.