

**IN THE COURT OF Munsiff No. 1 cum JMFC,
Nalbari**

Present: Dr. Nabanita Kalita

(Date of Judgment)
26.09.2022

PRC Case No. 1169/2018

(Details of FIR/Crime and Police Station)

COMPLAINANT:	STATE OF Assam
REPRESENTED BY	SMTI. PRITIMA DEVI, APP.
ACCUSED	1) JON BARMAN
REPRESENTED BY	MINAKSHI DEKA, ADVOCATE

Date of Offence	Since marriage
Date of FIR	18.12.2017
Date of Charge sheet	30.12.2017
Date of Framing of Charge	04.10.2019
Date of commencement of evidence	21.12.2019
Date on which judgment is reserved	NIL
Date of Judgment	26.09.2022
Date of the Sentencing Order, if any	NIL

Accused Details:

Rank of the Accused	Name of Accused	Date of Arrest	Date Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Sec 428 Cr.P.C
A-1	Jon Barman	Not mentioned	Not mentioned	498(A) IPC	Acquitted	N/A	N/A

JUDGMENT

1. The case of the prosecution in a nutshell is that accused is the husband of the informant. Informant's registered marriage was performed with the accused about two years ago and thereafter their marriage was solemnized socially. It is alleged that after some days of the marriage, the accused used to do physical torture upon the informant demanding dowry and assaulted her. It is also alleged that the accused on several days burnt the informant pouring kerosene oil upon her and tried to kill her gagging pillow on her mouth and she saved her life requesting the accused person. It is

further alleged that about 4 months ago, accused person assaulted the informant demanding money and drove her out of the matrimonial house and she is taking shelter in her parent's house.

2. On receipt of the FIR, police of Belsor PS registered the same as Belsor PS Case no. 262/17 under Section 498(A) IPC against the accused person and conducted investigation into the matter.

3. On completion of the investigation, the police submitted Charge sheet against the accused person namely Jon Barman under Section 498(A) IPC.

4. The accused person entered into appearance in response to the process issued. Copies of relevant documents were furnished to the accused person in accordance with section 207 Criminal Procedure Code.

5. Charge under section 498(A) of IPC is framed and same is read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

6. During trial, the prosecution examined 6 (six) witnesses.

7. The statement of the accused person was recorded u/s 313 of Cr.P.C. Defence declined to adduce DW evidence.

POINTS FOR DETERMINATION

- i) Whether accused person being the husband of the informant since after the marriage physically tortured her and thereby committed an offence punishable under section 498(A) IPC?

8. I have heard the learned counsel for both sides and have gone through the case record.

EVIDENCE ON RECORD

9. PW 1 Chakradhar Deka deposed in his examination-in-chief that he knows the informant of this case. He knows the accused person standing on the dock. PW 1 stated that accused person and informant are husband and wife. They got married in 2018 and after marriage, they led a conjugal life. After 3-4 months, they went to Guwahati and after a year, they came back. Later, she left her matrimonial home. He does not know any other thing.

10. During cross examination, PW 1 stated that he does not know why she left the accused person.

11. PW 2 Bimal Deka deposed in his examination-in-chief that he knows the informant of this case. He knows the accused person standing on the dock. PW 1 stated that accused person and informant are husband and wife. They got married two years ago and after marriage, they led a conjugal life. After 3-4 months, they went to Guwahati and after a year, they came back. Later, she left her matrimonial

home. He heard that she is now married to some other person. He does not know any other thing.

12. During cross examination, PW 2 stated that he does not know why she left the accused person. Informant went to her parent's house directly after she came back from Guwahati.

13. PW 3 Jaya Barman deposed in her examination-in-chief that she knows the informant of this case. She knows the accused person standing on the dock. PW 1 stated that accused person and informant are husband and wife. They got married four years ago. After marriage, they stayed in Guwahati. She then came back to her mother's house. She does not know why informant left her matrimonial house.

14. During cross examination, PW 3 stated that he heard that Pompei has now got married to someone else.

15. PW 4 Charu Barman deposed in her examination-in-chief that she knows the informant of this case. She knows the accused person standing on the dock. He is her nephew. PW 1 stated that accused person and informant are husband and wife. They got married four years ago. After marriage, they stayed in Guwahati for two years. She then came back to her mother's house from Guwahati. She does not know why informant left her matrimonial house.

16. During cross examination, PW 4 stated that she does not know if Pompei has now got married to someone else.

17. PW 5 Bhubaneswar Haloi deposed in his examination-in-chief that he knows the informant of this case. He knows the accused person standing on the dock. PW 5 stated that accused person and informant are husband and wife. Informant has left her matrimonial home after an altercation took place between them.

18. PW 6 Pompei Deka is the informant of this case. She deposed in her examination-in-chief that she lodged this case against her husband Jon Barman. The occurrence took place about 2/3 years ago. PW 1 stated that on 11.05.15 she was married to accused Jon Barman. After the marriage, she took admission in nursing course. At that time, she also worked in a pharmacy. PW 1 stated that her husband neither allowed her to work in other place nor allowed her to study nursing. PW 1 also stated that her husband took away money from her which she got working in the pharmacy and she also had to bring money from her mother's house. Her husband kept her certificates of nursing course. PW 6 further stated that one day night, the accused gagged her mouth with pillow and on 2/3 dates, the accused poured kerosene oil on her body. On 14.08.2017 she came to her mother's house and on

previous day, accused assaulted her. Thereafter, she has been staying in her mother's house. Ext. 1 is ejahar. Ext. 1(1) is her signature.

19. During cross examination, PW 6 stated that she has not written the ejahar herself. It is written as stated by her. She has not written the date of occurrence in the ejahar. She has not written in the ejahar as to how many days after the occurrence, she has filed the ejahar. PW 1 stated that after some days of the marriage with Jon, both of them stayed in Guwahati in rented house. She denied the suggestion that her husband Jon got her admitted in Nursing course. PW6 deposed that she came to her parental house 2months before the lodging of the FIR. PW 6 further stated that she after coming from Guwahati stayed at her mother's house. PW6 denied the suggestion that she has not stated to police that she was not allowed to work in pharmacy, she was not allowed to study and she was asked to bring money from her mother's house. PW 6 also stated that she has not called for any 'bichar' in the village. She has also not filed case before Mahila Samittee. Now she got married with Raju Barman from Goalpara. PW 6 further stated that she has not given divorce to her former husband. She has not visited doctor after her former husband Jon Barman assaulted her. PW6 denied the suggestion that while she was with Jon

Barman, she had affair with Raju and in connection with that, quarrel took place between them and she went away and had married with Raju Barman and for that reason, she lodged false case against Jon Barman u/s 498(A) IPC.

DISCUSSION, DECISION AND REASONS THEREOF

Point for Determination No.1

20. It is worthwhile to note that 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 wilful 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 wilful 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.

24. After going through the evidence of all the prosecution witnesses, it transpires that PW1, PW2, PW3, PW4 and PW5 have stated nothing incriminating against the accused person. PW6 who is the informant, stated in her evidence in chief that her husband neither allowed her to work in other place nor allowed her to study nursing. PW 1 also stated that her husband took away money from her which she got working in the pharmacy and she also had to bring money from her mother's house. Her husband kept her certificates of nursing course. PW 6 further stated that one day night, the accused gagged her mouth with pillow and on 2/3 dates, the accused poured kerosene oil on her body. On 14.08.2017 she came to her mother's house and on previous day, accused assaulted her. Thereafter, she has been staying in her mother's house. During cross examination he admitted that she has not

gone to a doctor after her former husband Jon Barman assaulted her. She also confirmed that she had lodged the FIR after 2 months of coming to her parental house from the house of accused person. She neither lodged any complaint in the mahila samitee nor called for any bichar in the village. PW6 further admitted that she was again married to Raju Barman of Goalpara without giving divorce to her former husband.

25. Thus from evidence of PW6 it is evident that she has not stated any of the specific dates on which date complainant gagged her mouth with pillow and poured kerosene oil on her body to burn her. She has mentioned that she was beaten the day before 14/08/17 for which she came to her paternal home on 14/08/17. However, there is nothing on record that complainant received any injury or grievous hurt as a result of the assault inflicted upon her by the accused persons. She herself admitted that she has not gone to a doctor. Moreover another fact which make story of the prosecution version weak is that informant admitted that she lodged the FIR after two months of coming from the house of informant. She also confirmed that she had neither called for any village bichar nor given any complaint in the mahila samitee. The delay in filing the FIR is also not explained by informant. In a marital relationship it is very natural

that the women do not want to take resort to police help to save her relationship, but it is also unbelievable that complainant after getting any grievous injury or such threat to life would not go to a doctor or complain to local body such as mahila samitee, village bichar. Other PWs has not corroborated to the statement of the PW6 i.e., the informant and victim. Another pertinent point that has come to light during cross examination of PW6 is that informant has married to another person without being divorced with the accused person which makes the prosecution case doubtful.

26. Now it is the burden of the prosecution to establish the guilt of the accused person. After careful scrutiny of the evidence on record this court of the considered opinion that the evidence on record does not lucidly portray the necessary elements required to constitute offences u/s 498(A). Due to insufficient evidence on the part of the prosecution side, it is a fit case in my view to acquit the accused from the charge levelled against him. Hence, the accused person deserves acquittal .

27. Situated thus, it is found that the prosecution has failed to implicate the accused person Jon Barman of any offence u/s 498(A) of IPC beyond reasonable doubt. As such, the point for determination is answered in negative and in favour of the accused person.

ORDER

In view of the discussion made above and the decisions reached in the foregoing points for determination, it is held that the prosecution failed to prove beyond reasonable doubt that the accused person had committed the offence under Section 498(A) IPC. As such, the accused person namely Jon Barman acquitted of the charge under Section 498(A) IPC and set at liberty forthwith.

The bail bond of the accused person and his surety shall remain in force for a period of six months from today in compliance with section 437(A) Criminal Procedure Code.

Case is disposed of on contest.

Given under my hand and seal of this court on this 26th day of September, 2022 at Nalbari, Assam.

(DR. NABANITA KALITA)
Judicial Magistrate, 1st Class,
Nalbari.

APPENDIX**LIST OF PROSECUTION/ DEFENCE / COURT WITNESSES****A. Prosecution:-**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW 1	Chakradhar Deka	Other witness
PW 2	Bimal Deka	Other witness
PW 3	Jaya Barman	Other witness
PW 4	Charu Barman	Other witness
PW 5	Bhubaneswar Haloi	Other witness
PW 6	Pompi Deka	Informant

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW1	NIL	N/A

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH
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		WITNESS, OTHER WITNESS)
CW1	NIL	N/A

LIST OF PROSECUTION/ DEFENCE / COURT EXIBITS

A. Prosecution:

Sr. No	Exhibit Number	Description
1	Ext-1	Ejhar
2	Ext-1(1)	Signature of PW 6

B. Defence:

Sr. No	Exhibit Number	Description
1	Exhibit D1/ DW1	NIL

C. Court Exhibits:

Sr. No	Exhibit Number	Description
1	Exhibit C1/ CW1	NIL

D. Material Objects:

Sr. No	Exhibit Number	Description
1	MO1	NIL

DR. NABANITA KALITA)
Judicial Magistrate 1st Class,
Nalbari.