

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

Present: Dr. Nabanita Kalita

(Date of Judgment)

21.09.2022

PRC Case No. 61/2020

(Details of FIR/Crime and Police Station)

COMPLAINANT:	STATE OF Assam
REPRESENTED BY	SMTI. PRITIMA DEVI, APP.
ACCUSED	1) Ashadul Ali (2) Babidul Ali (3) Akbar Ali (4) Anowara Begum
REPRESENTED BY	Abdul Mazid, Advocate

Date of Offence	Since marriage
Date of FIR	04.10.2019

Date of Charge sheet	30.11.2019
Date of Framing of Charge	18.11.2021
Date of commencement of evidence	01.04.2022
Date on which judgment is reserved	NIL
Date of Judgment	21.09.2022
Date of the Sentencing Order, if any	NIL

Accused Details:

Rank of the Accused	Name of Accused	Date of Arrest	Date Released on Bail	Offence charged with	Whether acquitted or convicted	Sentence or term imposed	Period of Detention undergone during Trial for purpose of Sec 428 Cr.P.C
A-1	Ashadul Ali	Not mentioned	Not mentioned	498(A) /34 IPC	Acquitted	N/A	N/A

A-2	Babidul Ali	Not mentione d	Not mentione d	498(A) /34 IPC	Acquitt ed	N/A	N/A
A-3	Akbar Ali	Not mentione d	Not mentione d	498(A) /34 IPC	Acquitt ed	N/A	N/A
A-4	Anowara Begum	Not mentione d	Not mentione d	498(A) /34 IPC	Acquitt ed	N/A	N/A

JUDGMENT

1. The case of the prosecution in a nutshell is that on 07.10.2016 accused Ashadul Ali performed marriage with the informant as per Muslim Chariot. It is alleged that since after the marriage, the accused persons have been torturing the informant mentally and physically due to dowry related cause. It is further alleged that the accused persons have been giving various inconvenience to the informant in food. It is stated that the informant being unable to bear the torture of the accused persons, on 14.12.2018 she took shelter at her parental home. As she was physically ill, hence delay occurred in filling the ejahar.

2. On receipt of the FIR, police of Nalbari PS registered the same as Nalbari PS Case no. 716/19 under Section 498(A)/34 IPC against the accused persons and conducted investigation into the matter.

3. On completion of the investigation, the police submitted Charge sheet against the accused person namely Ashadul Ali, Babidul Ali, Akbar Ali and Anowara Begum under Section 498(A)/34 IPC.

4. The accused persons entered their 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)/34 of IPC is framed and same is read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

6. During trial, the prosecution examined 5 (five) witnesses.

7. The statements of the accused persons are recorded u/s 313 of Cr.P.C. They denied all the allegations. Defence declined to adduce DW evidence.

POINTS FOR DETERMINATION

- i) Whether accused Ashadul Ali being the husband of the informant and accused Babidul Ali, Akbar Ali and Anowara Begum being relatives of husband in furtherance of their common intention, after the marriage of the informant subjected her with cruelty to coerce her to meet the unlawful demand of dowry and thereby committed an offence punishable under section 498(A)/34 IPC?

8. I have heard the arguments advanced by the learned counsel for both the sides and carefully gone through all the evidence adduced on record. Learned APP has submitted that the case of prosecution has been proved beyond reasonable doubt. Learned defence counsel submitted his argument stating that informant has lodged a false case against the accused persons. It is submitted that informant went to lachnow against the will of her husband and she left matrimonial home to marry her earlier boyfriend. It is further argued that informant has lodged the false case after leaving the matrimonial house willingly when her husband filed a case to bring her back.

EVIDENCE ON RECORD

9. PW 1 Kanchan Bibi deposed in her examination-in-chief that she knows informant Rabiya Begum. She shares boundary with the accused persons. PW 1 stated that Rabiya had got

married with Ashadul five years ago. After the marriage they stayed together as husband and wife. About two years ago, Rabiya's father came and took away Rabiya. PW 1 stated that Rabiya went away stating that she will not continue family life with Ashadul. PW 1 also stated that as per her knowledge about 12 days before Rabiya got married. Cross examination of PW1 was declined.

10. PW 2 Rabiya Begum is the informant of this case. She deposed in her examination-in-chief that she lodged the case against Ashadul and his family. PW 2 stated that about six years ago, her marriage was performed socially with Ashadul. After the marriage, she stayed at her matrimonial house. It is alleged that after six months of the marriage, all the accused persons demanded dowry and demanded money for purchasing bike. It is deposed that since her father was poor, he could not give money. PW 2 also stated that at the time of marriage, Rs. 5000/- was given for purchasing bicycle. Thereafter, Ashadul and his father assaulted her and did not allow her to go to her parent's home. PW 2 also alleged that later on 14th December, 2018 when she told that her father could not give money, the accused persons drove her out of the matrimonial house. Then she came to her parent's house. She lodged ejahar from her parent's house. She stated this fact to the police.

Ext. P2/PW2 is ejahar. Ext. P2(1)/PW2 is her signature.

11. During cross examination, PW 2 stated that she stayed at Lukhnow for one month. She went there in the year 2019. Her marriage was solemnized in October, 2016. PW 2 stated that she had executed Talaknama and advocate stated that she would get married after three months. PW 2 stated that she asked her husband but he did not give her Talaq. Her husband earlier stated that he would not take her back and now she would not go. PW 2 also stated that she lodged four cases against her husband. She brought her dowry articles from her matrimonial house. Ashadul did painting work and whom she was going to marry was a cultivator. PW 2 stated that she lodged this case after two years from coming of her matrimonial house. She does not know the name of the boy with whom she will get marry. He came to see her. She denied the suggestion that she had previous relation with the boy with whom her marriage was arranged, so she did not stay with Ashadul. PW2 also denied the suggestion that after the marriage, she stayed at Lukhnow for 2/3 years. PW 2 further stated that she gets Rs. 1800/- as maintenance allowance. PW2 deposed that it has not been paid. PW2 denied the suggestion that she had not written the statements in the ejahar whatever she had stated against the

accused in the court and she has lodged false case. PW2 further deposed that when accused persons lodged case against her for taking her back, then they lodged this case.

12. PW 3 Sahida Begum deposed in her examination-in-chief that she knows the informant as well as the accused persons. They are not relative. PW 3 stated that marriage of Ashadul and Rabiya was solemnized five years ago. She does know anything about the occurrence. As per hearing in the village, Rabiya got married 13 days before. PW 2 also stated that Rabiya went away to her parent's house stating that she does not want to continue familylife with Ashadul. She knows this much.

13. During cross examination, PW 3 stated that she heard that Rabiya stayed at Lukhnow. Rabiya Begum left herself.

14. PW 4 Hasmat Ali deposed in his examination-in-chief that he knows the informant as well as accused persons. Rabiya got married with Ashadul. He knows that after the marriage, Rabiya did not stay in the house of Ashadul. He does not know the rest incident.

15. During cross examination, PW 4 stated that he has not heard about Rabiya got married with another. Rabiya's house is at 4 km distance from his house.

16. PW 5 Bulbul Hussain deposed in his examination-in-chief that on 04.10.2019 he was posted as i/c of Kashimpur O.P. under Nalbari P.S. On that date FIR was lodged by Rabiya Begum, D/o.- Somej Ali, Vill.- Kashimpur against accused Asadul Ali, S/o.- Akbar Ali, Mafikul Ali, S/o- Akbar Ali, Akbar Ali, S/o.- Lt. Mamud Ali, Anwara Begum, W/o.- Akbar Ali. O/C of the Nalbari P.S. registered it as Nalbari PS Case no. 716/19 u/s 498(A)/34 IPC and endorsed him to investigate the matter. After the endorsement he recorded statement of complainant at her maternal house. He visited place of occurrence on that day and drew sketch map. P.O. was house of the accused. He recorded statement of the witnesses in the place of occurrence. He searched accused person at his home but could not find him. Failing to find out the accused persons he submitted charge sheet against the accused persons as absentee u/s 498(A)/34 IPC. Accused persons appeared before the Asstt. Sessions Judge, Nalbari and took anticipatory bail. Having come to know it he made supplementary case record and recorded statements of accused persons as they appeared before police station. Thereafter he submitted supplementary charge sheet against the accused persons viz. Asadul Ali, Merijul Ali, Akbar Ali, and Anowara Begum u/s 498(A)/34 IPC. Exhibit P2/PW5 is sketch map.

Exhibit P2(1)/PW5 is his signature. Exhibit P3/PW5 is his signature

17. During cross examination PW5 deposed that no notice was served upon accused persons for appearing before the I/O in the instant case. At that time there was not any circular for issuing notice upon accused persons. Later on, said he could not serve notices as accused persons were not found in their house. The accused persons have surrendered before him on 07.11.2019. He did not hang up any notice in the house of the accused persons when he visited in search of them. Though there is a guideline for cases u/s 498(A) IPC but he could not recollect what the guidelines are. He knows that in a case punishment of which is less than 7 years notice is to be issued. There are some persons near the PO and the distance of those people from the PO is twenty meter. Copies of the notices are not with the CD. He denied the suggestion that he has not properly investigated the matter and submitted charge sheet u/s 498(A)/34 IPC. He also denied the suggestion that he has no proper knowledge for investigating a matter u/s 498(A) of IPC.

DISCUSSION, DECISION AND REASONS THEREOF

18. It is worthwhile to note that section 498(A) IPC reads 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. Therefore to come into application section 498-A IPC, it is important to prove that the beating or mental harassment in question is done with a view to force the woman either to commit suicide or to fulfill the illegal demand of dowry . It is only where the harassment is shown to have caused for the purpose of coercing a woman to meet demands it amounts to a cruelty within the purview of this section. 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.

19. After going into detail appreciation of the above evidences on record it is revealed that except PW 2 who is the informant of this case, none of the witnesses of the prosecution side has mentioned about any illegal demand or torture either mental or physical on the part of the accused persons. PW 1, PW3, and PW4 who are neighbours and independent witnesses have stated nothing incriminating against the accused persons. Rather, PW1, PW3 stated that Rabia left home of Asadul stating that she would not continue family life with him. PW1 and PW3 also deposed that Rabia got married to another person.

20. PW2 who is the informant stated in her evidence in chief that after six months of her marriage, all the accused persons demanded dowry and demanded money for purchasing bike. It is deposed that since her father was poor, he could not give money. PW 2 also stated that at the time of marriage, Rs. 5000/- was given for purchasing bicycle. PW2 stated that Ashadul and his father assaulted her and did not allow her to go to her parent's home. PW 2 also alleged that later on 14th December, 2018 when she told that her father could

not give money, the accused persons drove her out of the matrimonial house. During cross examination PW2 admitted that she went to Lakhnow. She stated that her husband did not give her divorce even though she asked for it. She confirmed that now she has executed talaknama and advocate had informed her that after three month her marriage would be solemnized. She admitted that she is going to marry another man. PW2 deposed during cross examination that she had lodged the case after 2 years from coming from the house of her husband. Also she admitted that she lodged the instant case when her husband filed a case for restitution of conjugal rights.

21. While analysing and appreciating the evidence adduced by the PW2, it is seen that her credibility is shaken. She has admitted in her cross examination that she lodged the FIR after two years of coming from her matrimonial house. In her evidence she deposed that on 14/12/2018 she was beaten and driven out from her matrimonial house by the accused persons. Ext . P1/PW1 which is the FIR filed by informant shows that it was filed on 4/10/2019 i.e., ten months after the incidence. PW2 in her evidence has not stated any reason for delayed filing of FIR. But in her FIR she stated the ground as she was physically ill. 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 or that she was ill. In a marital relationship it is very natural that the women does not want to take resort to police help to save her relationship but it is also unbelievable that informant after getting any grievous injury or being severally ill would not go to a doctor. Whereas, in her cross examination, she had admitted the reason that she lodged the instant case when accused persons filed a case for bringing back her. She confirmed that she asked for divorce but her husband did not give and she executed talaknama. Further she admitted that she was going to marry another man. Hence, reasonable doubt arises about the probability of embellishment in the version of prosecution. I am of the opinion that the circumstances raise considerable doubt regarding the genuineness of the story of the prosecution. Rather it appears that she has filed this case after filing a case for restitution of conjugal rights after 10 months of leaving her matrimonial house. Moreover none of the PWs has corroborated to the story of the informant. In this context it is to be mentioned that 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.

22. Now, it is the burden of the prosecution to establish the guilt of the accused person. The evidence on record does not lucidly portray the necessary elements required to constitute offences u/s 498(A)/34. It is held that the prosecution has failed to show beyond reasonable doubt that informant Rabia Begum was treated with cruelty as defined u/s 498 A IPC. Due to insufficient evidence on the part of the prosecution side, it is a fit case in my view to acquit the accused persons from the charges levelled against them. Hence, the accused persons deserve acquittal.

23. Situated thus, it is found that the prosecution has failed to implicate the accused persons viz., Ashadul Ali, Babidul Ali, Akbar Ali, and Anowara Begum of any offence u/s 498(A)/34 of IPC beyond reasonable doubt. As such, the points for determination are answered in negative and in favour of the accused persons.

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 persons viz., Ashadul Ali, Babidul Ali, Akbar Ali, and Anowara Begum had committed the offence under Section 498(A)/34 IPC. As such, the accused person namely Ashadul Ali, Babidul Ali, Akbar Ali, and Anowara Begum are acquitted of the charges under Section 498(A)/34 IPC and set at liberty forthwith.

The bail bond of the accused persons and their 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 21st 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	Kanchan Bibi	Other witness
PW 2	Rabia Begum	Informant
PW 3	Shahida Begum	Other witness
PW 4	Hasmat Ali	Other witness
PW 5	Bulbul Hussain	I.O.

B. Defence Witnesses, if any:

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

C. Court Witnesses, if any:

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

**LIST OF PROSECUTION/ DEFENCE /
COURT EXIBITS****A. Prosecution:**

Sr. No	Exhibit Number	Description
1	P.Ext-1/PW2	Ejahaar
2	P.Ext-1(1)/PW2	Signature of PW2

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.