

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, BONGAIGAON

PRESENT: B. BARTHAKUR, AJS.

GR 284/14

{U/S 498A/34 I.P.C.}

State

Vs.

1. Md. Jasmat Ali.
2. Md. Anowar Hussain.
3. Md. Baten Ali.
4. Md. Monowar Hussain.
5. Musst. Abeda Begum.....Accused persons.

For prosecution : Smt. P. Chattarjee, Asst. P.P.
For defence : Kamal Chakraborty, Advocate.
Evidence recorded on 27-02-17
Arguments heard on 27-02-17
Judgment delivered on 27-02-17

JUDGMENT

1. The prosecution case in brief is that Musst. Rabiya Begum filed a complainant petition before the Ld. C.J.M., Bongaigaon, alleging that around five years back she got married to accused Jasmat Ali, as per Islamic rites. Her husband was Imam of Bhawlaguri Maszid of Bongaigaon and so he took her

to reside with him in a rented house in Bongaigaon after the marriage. After a few days, her husband gradually began inflicting physical and mental torture on her. After two months of the marriage, the complainant conceived but her husband cunningly got it aborted by making her take some medicines. The complainant conceived again and now has a girl named, Nasmina Begum, aged 11 months. In the meantime, the torture increased but the complainant tolerated it all thinking about the future of her daughter.

2. The complainant also alleged that her husband concealed to her that his previous wife is residing at Kalanchipara, Dist-Dhubri, along with his family members and had instead falsely told her that his previous wife expired. The family members of the accused person especially accused Anowar Hussain, Baten Ali, Manowar Ali and Musst. Adeda Begum used to frequently come to the rented house of the complainant and rebuke her in obscene language and also beat her up. This accused persons kept giving ill-advice to the husband of the complainant, as a result of which, he demanded Rs. 50,000/- from her and inflicted torture on her to meet the same. Finding no way out, the complainant fetched Rs. 30,000/- from her parents and gave it to her husband. It was then that her husband took her along with her child to his house at Kalanchipara but even in that place the accused persons used to inflict physical and mental torture on the complainant. After staying there for a week in this manner, the complainant returned to Bongaigaon along with her child. On 01-02-2014, at around 10.00am, the accused persons came to her house and again demanded Rs. 50,000/- from her and rebuked her in obscene language and beat her up. While leaving, the accused persons threatened that if the complainant cannot meet the demand, she will be left by her husband and that her husband will marry another woman. Ever since, none of them have looked up on the complainant or her child and have also not paid for her expenses. Explaining that delay was caused as she was waiting for an amicable settlement. The complainant filed this complaint petition on 26-03-14 and, hence, the instant case.

3. The case was forwarded to police for investigation. After completing investigation, police submitted charge-sheet against all the above named accused persons u/s 498A IPC. Copies were furnished to them on their appearance as per provisions of section 207 Cr.P.C. After hearing Ld. Counsels on point of charge and perusal of materials on record, charge u/s 498A/34, IPC, was framed and read over to the accused persons to which they pleaded not guilty and claimed to be tried.
4. In order to bring home the charge, prosecution examined the complainant and her mother. Going by their testimony, prosecution closed its evidence. With nothing incriminating in evidence against the, examination of the accused persons u/s 313 Cr.P.C was dispensed with.

POINT FOR DETERMINATION

5. Whether the accused persons, in furtherance of their common intention, committed cruelty on Musst. Rabiya Khatun, wife of Md. Jasmat Ali and thereby committed an offence punishable u/s 498A/34 IPC?

DISCUSSION, DECISION AND REASONS THEREOF

6. In order to come to conclusion on the above points, I have carefully gone through the evidence adduced and materials on record. **PW1 complainant- Musst. Rabiya Begum** stated that she got married to Jasmat Ali around six years back, which was a social marriage. They have a daughter-Nasima Begum who is aged over three and half years now. At the time of marriage her husband had told her that his previous wife has expired and so he wants to marry the complainant but after marriage, PW1 came to know that her husband had concealed that his previous wife is living and that he carries on family life with his previous wife. PW1 complained that accused Jasmat Ali married her by speaking lies. He even took money from her family on the

pretext that he has to spend it on death anniversary of deceased wife, which were all false.

7. PW1 further stated that Jasmat Ali got married to her in Bongaigaon and would not take her to Dhubri, where his house is situated. Later, she found out that he has given his false address in the Kabin-Nama and when PW1 asked him about it, he fled away. She went to his real house and found that his first wife is alive with children and that her husband was carrying on family life with them. So, in anger, she filed the complainant petition, Ext.1. PW1 further stated that at present she is residing in her parental home with her daughter. She has settled the matter with her husband and the other accused persons and they have decided to separate and dissolve the marriage. She also stated that she does not bear any grudges against her husband.
8. **PW2 Musst. Sakera Khatun**, mother of PW1 stated that Rabiya filed this case as her husband married her after telling a lot of lies. Now, both parties have come to an understanding and have decided to separate and dissolve their marriage. PW2 also stated that she has no grudges against the accused persons.
9. With nothing incriminating in evidence against them, examination of the accused persons u/s 313 Cr.P.C. was dispensed with.
10. Her arguments advanced by Ld. Counsels of both sides. In this case, it is seen that PW1 felt cheated on coming to know that her husband had lied to her about death of his first wife and that he has also fleeced her family of money on the pretext of performing annual rights of his deceased former wife. When PW1 went to her original matrimonial home, she was shocked to see for herself that her husband is carrying on family life parallelly with his first wife and children, whom he had said to have expired. This revelation and the consequent shock that PW1 received, goaded her to file the instant case. But these are per se, not the ingredients which attract offence u/s 498A, IPC.

For that matter, the allegation revealed in the complaint petition and the testimony of the PWs does not tally in totality. PW1 has not deposed about any dowry demand or torture meted out to her as alleged in the complaint petition. This is a big discrepancy. With evidence of this kind, it cannot be held that the accused persons have committed offence u/s 498A, IPC. Prosecution could not bring home the charge and accused persons get entitled to acquittal.

11. I, therefore, hold the accused persons namely, Md. Jasmat Ali, Md. Anowar Hussain, Md. Baten Ali, Md. Monowar Hussain, Musst. Abeda Begum not guilty u/s 499A/34 IPC and acquit them accordingly.

12. Judgment is delivered in the open court.

Given under my hand and seal of the Court on this **the 27th Day of February/2017.**

Delivered by

Smt. B. Barthakur
Addl. C.J.M., Bongaigaon.

Contd.....

APPENDIX

WITNESSES EXAMINED BY PROSECUTION:

PW1..Rabiya Begum.

PW2..Sakera Khatun.

DOCUMENTS EXHIBITED BY PROSECUTION:

EXT.1..Complaint petition.

WITNESS EXAMINED BY DEFENCE:

None.

DOCUMENTS EXHIBITED BY DEFENCE:

None.

Smt. B. Barthakur
Addl. C.J.M., Bongaigaon