



**IN THE COURT OF THE ADDL. CHIEF JUDICIAL MAGISTRATE,  
BONGAIGAON**

**GR Case No. 385/10**

State

-V-

Md. Manik Ali ..... Accused person

Present : B. Borthakur,  
Additional Chief Judicial Magistrate,  
Bongaigaon

In appearance:

For Prosecution : Shri R.C. Mahato, Addl.P.P.  
Ms. Ranjana Rani Dutta, Addl. P.P.  
For Defence : Shri Sanatan Sarkar, Advocate

Date of recording evidence : 10-01-12, 14-02-12, 05-08-15, 06-10-16

Date of argument : 11-05-17, 27-07-17

Date of Judgment : 31-07-17

**u/s 498A, IPC**

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**APPENDIX**  
**GR 385/10**



Witnesses examined by Prosecution

- PW1 - Msst. Rezia Khatoon  
PW2 - Md. Kasem Ali  
PW3 - Md. Mazibar Rahman  
PW4 - I/O-S.I. Lakheshwar Pathak

Documents exhibited by Prosecution

- Ext-1 - Complaint petition  
Ext-2 - Sketch Map  
Ext-3 - Statement of complainant (PW1) recorded u/s 164, CrPC  
Ext-4 - Charge Sheet

Witnesses examined by Defence

None

Documents exhibited by Defence

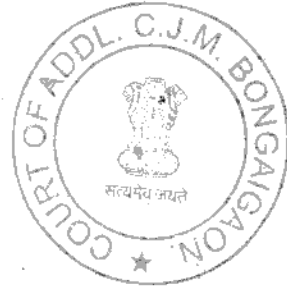
None

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## JUDGMENT

1. The case of prosecution, in brief is that, complainant- Msst. Rezia Khatoon married accused Md. Manik Ali on 21-06-10 as per Islamic rites at a Mehr amount of Rs. 51,001/- and the marriage was also registered vide Kabin-nama. After about a month and half of her marriage, her husband began demanding Rs. 10,000/- from her in dowry, on the instigation of the other accused persons, namely – Md. Hamed Ali, Msst. Manikjan Khatoon, Msst. Hasna Bhanu and Md. Abser Ali. On her refusal to pay the same, the accused persons began inflicting physical and mental torture on her. The complainant quietly suffered it all. The tortures increased day by day. Finally, on 23-09-10, at around 4:00am, the husband of the complainant, along with the other accused persons, beat her up and drove her out of the house and threatened that unless she meets the demand of Rs. 10,000/- she cannot enter their house and she will not be accepted as his wife. A month earlier also, the husband of the complainant had burnt her on several parts of her body with bidi. And he also forced the complainant to spend the night outside after forcing her out of the house. Explaining that delay was caused due to time taken in engaging and consulting with advocate, Msst. Rezina Khatoon filed the complaint petition before the learned SDJM(M), Bijni, on 01-10-10 and hence the instant case.
2. The case was forwarded to O/C, Manikpur P.S., for investigation. After completing investigation, police submitted charge-sheet against the above named accused persons, u/s 498A/34, IPC, before the Ld. SDJM(M), Bijni. Copies were furnished to them on their appearance as per provisions of sec. 207, CrPC. After hearing learned counsels of both sides on point of charge and perusal of materials on record, **charge u/s 498A, IPC, was framed against accused Md. Manik Ali only** and read out to him, to which he pleaded not guilty and claimed to be tried. **The other accused persons were discharged.** Two PWs were

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examined. Thereafter, vide order dated 09-06-15, the Ld. SDJM(M), Bijni, transferred the case to Hon'ble CJM, Chirang, in compliance with order dated 07-04-15 passed by the Gauhati High Court in WP(C) 5763/14 and M.C. No. 597/15. The case was, hence, transferred to the Hon'ble CJM, Bongaigaon, who transferred it to this Court for disposal.

3. In order to bring home the charge, prosecution examined as many as four witnesses including the I/O. Accused Md. Manik Ali was examined u/s 313, CrPC. His plea was one of total denial.
4. Defence did not adduce any evidence.

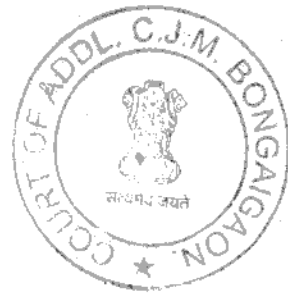
#### **POINTS FOR DETERMINATION**

5. I have carefully gone through materials on case record and I find that in order to ascertain guilt of the accused person, it is necessary to determine whether:-
  - i) The accused person committed cruelty on his wife - Msst. Rezia Khatoon.

#### **DECISION, DISCUSSION AND REASONS THEREOF:**

6. To arrive at a conclusion on the above point, the evidence adduced has been carefully gone through. **PW1-complainant Msst. Rezia Khatoon**, stated that after about two months of her marriage, her husband and her mother-in-law began beating her up and demanding Rs. 10,000/- in dowry. Her husband also burnt her right hand at various places with a bidi due to which she sustained injuries at different part of her hand. He again demanded Rs. 10,000/- and when she could not fulfill it, he beat her up and drove her out of the house. PW1 was forced to take shelter in her parental home. Ever since, she has been in her

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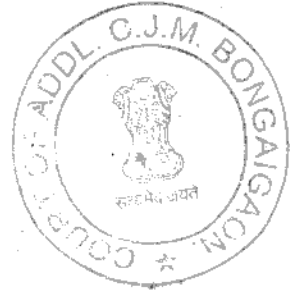


parental home. She had come to Court to be examined by a Magistrate also.

7. During cross-examination, PW1 stated that she did not remember the dates when the money was demanded from her. The accused persons beat her up in the daytime as well as at night. Around 40-50 neighbours had gathered, namely – Morziban, Saijuddin, Taher Ali, and others. She was getting beaten up to meet their demand for money. She got delayed in filing this case as a village meeting was called to settle the matter but the accused persons did not turn up. Junu, Banu, Sahed Ali, etc., were present in the meeting. So she filed this case after about a month of coming back to her parental home. The meeting was called after about two days after she went to her parental home. She was medically examined after the case was received at the police station. Police examined her in her house before she left for work. She was sent to the Magistrate for getting her statement recorded after about two months of filing this case. PW1 denied that she had not told police that she was burnt with bidi and that her husband had not committed any atrocity on her. She denied that she had voluntarily come from her matrimonial home and gone to work in a brick kiln.

8. **PW2-Md. Kasem Ali**, father of PW1, stated that he gave his daughter in marriage to the accused person as per Islamic rites. About two months went by fine. Thereafter, the accused person demanded Rs. 10,000/- from his daughter and began beating her up for the same. He did not fend for her, used to give her trouble and hardship and burnt her hand at different places with a bidi. He beat her up and then drove her away. As a result, his daughter was forced to take shelter in his house. The accused person came to his house after five days with a document for talaq but his daughter refused to sign on it. At present also his daughter is residing with him. During cross-examination, PW2 stated that

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the house of Manik Ali (the accused person) is around 15-20 houses away from his. He did not remember the dates on which the accused person beat up his daughter. PW1 denied that he had not told police that the accused person had demanded Rs. 10,000/- from his daughter (PW1) and beat her up for the same and that the accused person came to his house after five days for talaq. PW2 made known that after PW1 was driven out, both the families of PW2 and the accused person went to work in brick kilns but in different places. There was no maintenance amount for his daughter after she was driven out of her husband's house and so they had to go and work in brick kiln. His daughter and all his family members had gone to work there. Defence suggested that PW1 left her matrimonial home of her own volition and that instead of going with her husband and his family of her husband to work in a brick kiln, she came to her father's house and that PW2 is deposing falsely for her sake, which PW2 denied.

9. **PW3-Majibar Rahman**, a cultivator, stated that PW1 got married to the accused person around five years back (from date of deposition, ie 05-08-15). After carrying on family life for a few days, the couple began to have fights amongst themselves. Accused Manik Ali had himself told him that he had beaten up his wife. As per Manik Ali, his wife had left herself. PW3 and some other village people mediated and settled the matter. He did not know why Rezia filed this case later. He made known that Rezia has married another man.

10. **PW6-I/O-S.I. Lakheshwar Pathak**, narrated the various steps taken for investigation. On 08-10-10, while he was on duty as A.S.I at Manikpur P.S., the O/C – S.I. Fazlul Haque, received Ext-1, the complaint petition from SDJM(M), Bijni Court, and registered Manikpur P.S. case no. 132/10 u/s 498A/34, IPC, and handed over charge of preliminary investigation to him. After taking charge of preliminary investigation, he went to the parental house of the complainant and recorded her

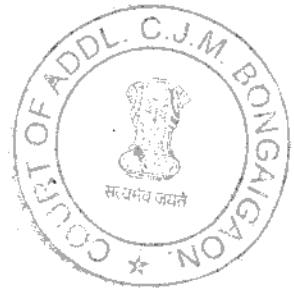
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statement. He also examined other witnesses. Then the I/O went looking for the accused persons in the same village, ie Deotari, on 08-10-10 itself, but did not find them. He inspected the place of occurrence and prepared sketch-map, **Ext-2**. On 15-10-10, he went looking for the accused persons again but could not find them. The I/O enquired about them from the VDP who told him that they work in a brick kiln somewhere outside. As the I/O was under order of transfer, he handed over case diary to the O/C on 15-10-10 itself. The I/O stated that from the case diary, it is seen that the next I/O – ASI Ghanak Chandra Barman, sent the complainant to the Magistrate for getting her statement recorded u/s 164, CrPC. **Ext-3** is the said statement. ASI G.C. Barman completed his part and handed over the case diary to the O/C, who then submitted charge-sheet against accused – Hamed Ali, Manik Ali, Hasna Bhanu, Abser Ali and Manijaan Khatoon u/s 498A/34, IPC. The I/O made known that there are no houses near the house of the accused persons. The houses are sparsely spread out in that area. The house of the accused persons from the parental home of the complainant would be around over one km. The I/O did not examine the persons present in the village meeting as he did not find them. The I/O confirmed that **PW1-Rejina Khatoon (Rezia Khatoon)**, did not tell him that the accused person burnt her hand with bidi. **PW2-Kasem Ali**, did not tell him that the accused person had brought talaq (divorce) papers to his house and that the accused persons had burnt his daughter with fire. PW2 had told me that Rs. 10,000/- was demanded by the accused persons as dowry.

11. The accused person was examined u/s 313, CrPC. His plea was one of total denial. He stated that he had never beaten up his wife or demanded dowry from her and that she left out of her own will. He also stated that his wife, Rezia, has married another man and that she has even borne a son from that marriage.

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12. Heard the rival contentions of learned counsels of both sides and perused record. Ld. Counsel for prosecution argued that cause of delay is understood from the fact that a meeting was held, which took time. PW1 was burnt at several places on her body by the accused person with a bidi for not fetching dowry. This being a family matter, she had informed about it to her father. During cross-examination, PW1 confirmed that she was beaten up for dowry. PW3 confirmed that the fight had taken place between husband and wife. This proves that a fight had taken place and that the complainant had suffered cruelty in the hands of the accused person. When she is driven out from her matrimonial home, it is natural that she will take shelter in her parental home. It is only the victim who will understand what trauma she had gone through when a lit bidi is doused on her hand. Rezia married a second time just within one or two years from now and not in the year 2010. Her second marriage is not the reason for which this case was filed. The independent witness spoke volumes in his short testimony. The accused person has inflicted cruelty on PW1 and he deserves to be convicted for the same.

13. Ld. Counsel for defence argued that the case was filed on 01-10-10 but the occurrence took place on 23-09-10. There is a delay of nine days in filing the case. Interestingly, there were five persons against whom the case was filed but charge was framed only against this accused person and the remaining four accused persons were discharged. Prosecution examined four witnesses, with one of them being the I/O. PW1 stated that around 30-40 persons had gathered but police examined only one of them. Police did not examine the others. But PW3-Mojibur, testified that he had not seen the occurrence. PW3 also stated that police had not examined him and that Rezia has married another person in some other place. PW3 also stated that he did not know why Rezia filed this case. PW1, the complainant, herself stated that she had filed the case after about one month of residing in her parental home. But in her complaint

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petition, she stated that she has filed after nine days of the occurrence. PW1 is self-contradictory. She did not state before police that she was burnt with *bidi*. The I/O confirmed it. PW2, the father of the complainant, did not mention the dowry demand and being burnt by fire before the I/O. The I/O testified that the investigating officers after him did not conduct any investigation in this case. Rezia left her matrimonial home only to marry some other person and then heaped this false case against the accused persons. Any burn injury will leave a scar mark and there will be some medical treatment done. But there is nothing to show that PW1 was burnt with *bidi*. This is a false case. Ld. Defence counsel also submitted that PW1 has not been able to live peacefully with her second husband and now she has left him also and married a third one. The accused person is totally innocent and he deserves to be acquitted.

14. In the instant case, informant PW1 has alleged cruelty to have been meted out to her in the form of physical torture and dowry demand. PW1 even went to the extent of alleging that the accused person had burnt her hand with *bidi*. Although PW1 stated that she was medically examined after the case was received by police, there is no medical report found in case record (or even in case diary). Neither is there any mention of scar mark of burn injury in her deposition recorded at Bijni Court nor in her statement recorded u/s 164, CrPC, by the Magistrate at Bijni. Interestingly, although PW1 alleged in her FIR and in her evidence that she was burnt on her hand with *bidi*, she stated that she was burnt with firewood during her statement recorded u/s 164, CrPC. There is no mention of firewood in evidence or FIR and there is no mention of *bidi* in her statement u/s 164, CrPC. It compels one to come to the conclusion that had this allegation been true, PW1 could not have come up with this discrepancy. In any case, there is no medical report or any mention of scar mark to support this allegation and coupled with the discrepancy mentioned above, a doubt has arisen in the prosecution story.

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15. This is a case which suffers from lack of supporting evidence to bring home the charge against the accused person. Although PW1 and her father (PW2) alleged that PW1 was beaten up and tortured and dowry demanded from her, yet there is no other witness to support it, especially in absence of any medical document. Even though PW3 stated that the accused person told him that he had beaten his wife, he also told in the same breath that the accused person also told him that his wife left his house out of her own volition. This witness stated that he was one of the mediators who made the parties arrive at an understanding and he did not know why PW3 filed this case. PW3 made a statement casually and this, by itself, is not sufficient to prove the allegations against the accused person. The severity of allegations is not backed up by corresponding strong evidence in order to prove the same. There is dearth of evidence to prove the allegations and the accused person is, therefore, entitled to acquittal.

16. In the result, I hold the accused person, Md. Manik Ali, not guilty u/s 498A, IPC, and acquit him accordingly.

17. Judgment is pronounced in open Court.

Given under my hand and the seal of this Court on this, the 31<sup>st</sup> day of July, 2017.

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Additional Chief Judicial Magistrate,

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