

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

G.R. CASE NO 150/16

Under Section 498A of the Indian Penal Code



STATE

V.

SRI JAHANGIR ALI

MUSSTT SAHATON BEWA

.....Accused Persons.

PRESENT: - SMTI. LEENA DOLEY, AJS

ADDL. CHIEF JUDICIAL MAGISTRATE, BONGAIGAON.

FOR THE PROSECUTION :- SMTI. RANJANA RANI DUTTA, Learned Addl. P.P.

FOR THE ACCUSED :- SRI D.A. RAHIM, Advocate.

EVIDENCES RECORDED ON :- 27-01-17, 27-03-17, 15-05-17, 05-06-17,

14-09-17, 26-06-18.

ARGUMENTS HEARD ON :- 19-01-19.

JUDGMENT DELIVERED ON :- 22-01-19

JUDGMENT

1. The prosecution case in brief is that Musstt Rashida Begum was married to Jahangir Ali some 10 years ago and they have a son out of their wedlock but some 1 ½ years ago Jahangir Ali married a second wife and since then he started subjecting tortures

22/01/19
ADDL. C.J.M.
BONGAIGAON

upon Musst Rashida Begum. Jahangir Ali once attacked Musst Rashida Begum on her head with an intention to kill her but this incident was amicably settled between them in a village meeting. Musst Shahaton Bewa tried to burn her with firewood from fireplace. On 17-02-16 Jahangir Ali and Musst Sahaton Bewa attacked Musst Rashida Begum with sticks and caused hurt to her on several parts of her body and Sahaton Bewa even brought a sharp cutting instrument (Bothi Da) for Jahangir Ali to kill her. Musst Rashida Begum shouted aloud for help and when the neighbours and villagers came for her help she escaped death. Jahangir Ali and Sahaton Bewa attempted to make Musst Rashida Begum a mental patient but she filed a complaint in the North Bongaigaon Patrol Post on 20-02-16. As Musst Rashida Begum was busy taking treatment she filed her complaint lately on 20-02-16.

2. The police registered a case on receipt of the FIR as Bongaigaon P.S. Case No.106/16 and investigated the case. After investigation police submitted charge sheet against the accused persons under section 498A of the Indian Penal Code. The case was registered as G.R. Case No. 150/16. Cognizance was taken after this case was transferred to this Court for trial.
3. The accused persons appeared in the Court and were granted bail. Copies of relevant documents were furnished to the accused as required under Section 207 of the Code of Criminal Procedure and after a preliminary hearing formal charge U/S 498A IPC was framed against the accused persons and when the charge was read over and explained to the accused they pleaded not guilty and claimed to stand trial.
4. The prosecution examined nine witnesses and the accused did not examine anyone as witness.
5. The accused were examined under Section 313 of the Code of Criminal Procedure on 10-12-18 where they have denied the allegations and declined to adduce evidence.



22/01/19.
ADOL C.J.M.
Bongaigaon

6. I have heard the arguments advanced by the learned counsels for both the sides and after considering all, I have framed the following points for determination:-

Whether on 17-02-16 and on several other days the accused persons subjected the informant to cruelty being her husband and mother in law and thereby the accused committed offence punishable U/S 498A IPC.

If yes, what punishments do the accused deserve?

7. DISCUSSIONS, DECISION AND REASONS THEREOF:-

Now, let us decide the points in the light of the evidences available with the case record:

i) PW1 is the informant as well as the victim in this case and has deposed that she was married to accused Jahangir Ali some 10 years ago and after two years of their marriage her husband and co-accused being her mother in law both started subjecting her to tortures. She has deposed that the accused persons demanded Rs 1 lakhs for buying a vehicle and also used to verbally abuse her for every small thing. She has deposed that as her father was a poor man and could not fulfill the demand of money she was beaten by the accused persons. She has deposed that one year before to her testimony in the Court, her husband beat her very badly and caused injury on her head and drove her out of her matrimonial home. She has deposed that after she was driven out of her matrimonial home she took shelter at her related maternal uncle namely Hazarat Ali's house. She has further deposed that her husband married a second wife without her consent during her stay at her matrimonial home and after the death of his second wife her husband again married a third wife with whom he is staying together. She has deposed that she finally on the same day when she was driven out filed a complaint in the police station with her thumb impression over the FIR.



18,
22/01/19
ADIL C.J.M.
Bongaigaon



ii) PW1 in her cross examination has denied the suggestion that she has not stated the fact of demand of Rs 1 Lakhs made by the accused persons in her FIR. PW1 has admitted that she did not state before the investigating officer in her earlier statement about this fact of demand of money by the accused persons. She has admitted that she cannot say name of any neighbour of her matrimonial home and also admitted that she never filed any complaint before this one for any incident which took place earlier to last incident. She has deposed that her mother Asma married Hazarat Ali and they both once caused hurt to the accused persons for which the accused filed a complaint against them. She has denied the suggestion that the accused persons never made a demand of Rs 1 Lakhs from her and that she has left her matrimonial home on her free will and she has falsely filed this complaint against the accused persons.

iii) PW2 is Hazarat Ali who has also narrated the prosecution case in the same tune as that of the victim (PW1). He has deposed that the victim was married to accused Jahangir Ali some 10/11 years before and they have a son and after accused Jahangir Ali married another wife, he drove out the victim from his house after beating her. He has deposed that as the informant's parents were dead he was looking after the victim and therefore the accused wanted him to fulfill demand of money from the informant. He has deposed that he also failed to fulfill the demand of money because of which the victim was beaten by the accused persons. He has deposed that the accused and the victim were amicably compromised several times in the village meetings but accused Jahangir Ali continued to subject the victim to torture. He has deposed that the co-accused i.e mother of accused Jahangir Ali also burned the victim with burning firewood and on 17-02-16 the accused persons beat the victim and drove her out of her matrimonial home and he took the victim to Bongaigaon Civil Hospital for treatment and later the victim filed a complaint in the police station.

iv) PW2 in his cross examination has denied the suggestion that he has deposed falsely in favour of the victim as the victim is his daughter. He has deposed that in the village meeting the following persons were present who settled the accused

22/01/19
ADUL C.J.M.
Bongaigaon



and the victim namely Mojamil, Jamal, Umar, Iddik Bihari and has denied the suggestion that no meetings in the village took place and that the victim has left her matrimonial home on her own will.

v) PW3 has also narrated in the same manner about the fact of marriage of the accused Jahangir Ali with the victim and about two more marriages of the accused Jahangir Ali. She has also deposed that after Jahangir Ali remarried two more times, he started beating the victim and once accused Jahangir Ali inflicted injury over the head of the victim at his tea shop and she saw the victim crying and walking through the road. She has deposed that the accused persons used to beat the victim for fulfilling demand of money and inspite of their settlement in the village meeting, accused Jahangir Ali continued to torture the victim and after a month later, even drove her out of his home and since then the victim has been staying with her maternal uncle. She has deposed that she is a resident having her home near the accused persons.

vi) PW3 in her cross examination has admitted that the victim is her step daughter and that on the day when she saw the victim with head injury, one Kamaal mason and labourer Lucy were also with her. She has admitted that she heard about the demands made by the accused persons in the village meeting and also admitted that she did not hear with her own ears. She has admitted that she did not state before the police in her earlier statement about the demand of money and also did not state about any date of incident. She has deposed that after one month of the incident the victim lodged this complaint. She has denied the fact that she is not a resident near the house of the accused persons and also denied the fact that she has falsely deposed in favour of the victim as the victim is her step daughter. She has admitted that there are Mozammil Home guard, Majibar Gaonburah, Khabur Uddin near the house of the accused and also admitted that no dispute took place in the house of the accused but the incident took place in the tea shop of the accused.

22/01/19
ADL C.J.M.
BONGAIGAON



vii) PW4 is a neighbour of the accused persons and has deposed that after about 2/3 years of their marriage, the accused Jahangir Ali started subjecting the victim to tortures by beating her and she has deposed that she has seen the accused Jahangir Ali beating the victim Rashida Begum. She has further deposed that two months before to filing of this complaint accused Jahangir Ali beat Rashida with a tree branch and Rashida came running to her and narrated the incident and she also saw mark of injury on the victim's buttocks. She has further deposed that the victim called for a meeting in the village and the parties were tried to settle with each other but as the accused Jahangir Ali did not accept the decision of the village meeting, Rashida was taken back by her family members and since then she has been living with her maternal uncle.

viii) PW4 in her cross examination has admitted that the victim filed this case after two months of the day when she was driven out of her matrimonial home. PW4 has deposed that the victim Rashida has been married off to a different place now and also deposed that she do not know what was the cause for the fight between the victim and her husband. She has deposed that she do not remember the date and day of the incident and the date of the village meeting. She has deposed that she do not know whether a written resolution was taken in the village meeting and also do not know who was the President or Secretary of that meeting. She has denied the suggestion that the victim has not been physically assaulted or tortured in any manner by the accused persons and she has deposed falsely in the Court.

ix) PW5 has deposed that the victim has been married to the accused Jahangir Ali some 11/12 years ago and that accused Jahangir Ali has married three wives and one of them died. He has deposed that the victim and accused Jahangir Ali had a fight and Jahangir Ali caused hurt to the victim for which she called for the meeting in a village and Hasanur Jaman was the President of that meeting. He has deposed that the parties were amicably settled in the meeting and accused Jahangir Ali took back his wife (victim) to his house but again both the parties fought with each

22/01/19
ADUL C.J.M.
BONGAIGAOIN



other and then the victim's mother and step father came to her matrimonial home and took her along with them.

x) PW5 in his cross-examination has admitted that he did not witness accused Jahangir Ali causing hurt to his wife but he heard the incident at the meeting and also admitted that he do not remember the date of meeting. He has deposed that after this meeting where the parties were compromised the victim stayed with the accused for 1 to 1 ½ weeks and thereafter her parents came to her matrimonial home and they had a quarrel at the accused person's house and took away the victim with them. He has deposed that he do not know after how many days of her departure the victim filed this complaint in the Court and has deposed that the victim Rashida has now re-married. He also deposed that he do not know whether a written resolution was taken in the village meeting or not.

xi) PW6 has also narrated the prosecution case in the same manner as that of the previous witness (PW5) both in his examination in chief and also in this cross-examination. PW7 has deposed that he do not know anything about any incident between the accused and the victim.

xii) PW9 is the Medical Officer who examined the victim on 17-02-16 at Bongaigaon civil hospital at around 7.30 PM and found the following:-

- a) Bruise rounded shape on the mid of the back measuring about 5 x 2 cm caused by blunt and round object.
- b) Blunt with bruise two in numbers one on each buttock caused by round object measuring about 5 x 2 cm.
- c) Multiple ill-defined soft tissue injuries over the body.

PW9 has opined the injuries to be simple in nature and caused by blunt and rounded object and about 5/6 hours old and has proved Exhibit 2 as the Medical Report and Exhibit 2(1) as his signature. PW9 in his cross-examination has admitted

22/01/19
C.J.M.
Bongaigaon



that he examined the victim on police requisition but he did not mention the police reference number in his medical report as no number was furnished by the police.

xiii) PW8 is the Investigating Officer and has deposed that on 20-02-16 he was the I.C of North Bongaigaon P.P. and on receipt of an FIR from Rashida Begum he entered the same in the general diary and forwarded the FIR to the Bongaigaon Police Station for registration and accordingly Bongaigaon P.S. case number 106/16 under Section 498(A) IPC was registered and he was endorsed the charge of investigation. He has deposed that he visited the place of occurrence and inspected the same and also examined witnesses present and collected the injury report from the hospital and on completion of his investigation submitted charge sheet against the accused. He has proved Exhibit 1 as the charge sheet and Exhibit 1(1) as his signature.

xiv) PW8 in his cross-examination has deposed that PW2 Hazrat Ali did not state before him that mother of accused Jahangir Ali caused burn injury to the victim with burning fire wood and also did not state that the accused person beat the victim and caused injuries. He has deposed that PW2 did not state before him that he took the victim to hospital for treatment. He has deposed that PW2 did not state before him that the accused demanded money from the victim. PW8 has denied that suggestion that he did not investigate the case properly and have falsely submitted the charge sheet against the accused.

xv) From the above testimonies of the witnesses it is quite evident that the accused persons and the victim did not share a healthy relationship with each other. The victim (PW1) though has alleged the accused of demanding money she in her cross examination has admitted that she failed to state this fact in her earlier statement before the police. PW2 being the step father of the victim (PW2) though has stated about the demand of dowry and alleged the co-accused of causing burnt injury to the victim (PW1) PW8 the investigating officer has confirmed that PW2 did not state these facts of demand of money and burnt injury in his earlier statement.

22/01/19
ADUL C.J.M.
Bongaigaon



xvi) PW3 is the step mother of the victim and she has herself admitted in her cross examination that she has only heard about the incidents and about demand of money but PW3 has specifically narrated about one incident only which according to her took place in the tea shop of the accused and not at their home and also specified that the victim (PW1) was inflicted injury on her head. PW4 has also narrated about an incident where the victim was attacked with a tree branch by accused Jahangir Ali and she sustained injury on her buttocks. This testimony of PW4 is also supported by the evidence of PW9 the medical officer and Exhibit 2. PW5 and PW6 have narrated in the same manner that some fight took place between accused Jahangir Ali and the victim and their differences were settled in village meeting but after the decision of the meeting also they fought with each other and being aggrieved the victim was taken away by her parents.

xvii) In this case though the victim (PW1) and PW2 have alleged the accused persons of demanding money, they have contradicted in their testimonies by not stating this fact in their earlier statement when the incidents were fresh. Further from the testimonies of the victim (PW1), PW2, PW3 and PW4 one thing is evident that the accused have physically caused hurt to the victim but it is still vague about which incident all the witnesses have referred, means, whether PW3 and PW4 have narrated about the same incident with different injuries or have stated about two different incidents. It is seen that all the witnesses have stated that some village meeting took place for settlement between the accused and the victim but no sufficient proof of such meeting has been adduced by the prosecution either oral or documentary. No person who was present in any such meeting or persons who were related with the settlement process has been adduced as witness in this case.

xviii) Thus though the prosecution witnesses have alleged the accused persons of causing hurt and tortures to the victim, in absence of specific dates and place and narration of specific incident in details and only with this piece of evidence that the parties were settled in village meetings is not sufficient evidence to prove the offence U/S 498A IPC.

22/01/19
ADDL C.J.M.
BONGAIGAON



xix) In order to prove the offence U/S 498A IPC the prosecution has to prove that the accused persons have subjected the victim to cruelty and cruelty as defined in the section has been reproduced under for better understanding:

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 or

(b) harassment of the woman where such harassment is with a view to coercing her or 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 demand.

xx) In this instant case it has already been discussed and decided that the prosecution failed to prove that there was demand of dowry from the accused persons and thus the accused are not found guilty under the category (b). With regard to the definition given in (a) of any willful conduct, the witnesses have given an idea that the victim was physically beaten by the accused Jahangir Ali but have failed to specifically give details of the incidents as to the date of the incidents, place and the manner how the victim was tortured. The witnesses PW1, PW2, PW3 and PW4 have narrated about single incident only though it is not evident whether PW4 have also narrated about the same incident as PW1 and PW3 or not. From the testimonies of the witnesses it is seen that except single incident, the witnesses have failed to elaborate the wilful conduct of the accused and also failed to prove that this one incident 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. Furthermore it is also evident that accused Jahangir Ali has married three wives and is living with his third wife now as stated by the witnesses but it also cannot amount to a wilful conduct as referred above.

22/01/19
ADDL C.J.M.
Bongaigaon



xxi) The evidence adduced by the prosecution is not sufficient to prove that the accused have committed any offence punishable U/S 498A IPC. However the single incident where the accused Jahangir Ali has caused hurt to the victim and has inflicted injury on her head as stated by the victim (PW1) and is supported by PW2 and PW3 and where PW4 has deposed that she has seen the victim with her injuries, it is sufficient to believe that the accused Jahangir Ali has caused hurt to the victim. PW2 though has alleged the co-accused of inflicting burnt injury to the victim (PW1), the victim or any other witness have not uttered anything about the co-accused. Further PW8 the investigating officer has confirmed that PW2 did not state about this burnt injury in his earlier statement, which means that PW2 has exaggerated and has contradicted in his testimony. PW2 has also supported the victim (PW2) by deposing that she was driven out of her matrimonial home after she was beaten by the accused on 17-02-16.

xxii) Thus from the overall discussions the incident of causing hurt to the victim (PW1) by the accused Jahangir Ali on 17-02-16 is found to be true, though except PW2, none other witnesses have stated the date. It is evident that the victim was taken away / driven out of her matrimonial home after the incident of physical assault and from the evidence of PW9, medical officer and Exhibit 2 it is sufficient to believe that the victim sustained simple injuries on her person and thus accused Jahangir Ali is found guilty of committing offence punishable U/S 323 IPC. The prosecution has failed in proving the charge U/S 498A IPC against the accused persons beyond reasonable doubt and hence the point is decided in the negative and in favour of the accused. However accused Jahangir Ali is found guilty of committing simple hurt to the victim (PW1) and is convicted for the same.

8. Heard the accused on point of sentence where he has prayed for leniency taking the plea that he is a first time offender and that he is the only member earning for his family including his mother the co-accused.
9. Taking the prayer of the accused into consideration along with his age, character and conduct in the court I do not intent to give him the benefits as provided under section

22/01/19
 ADDL C.J.M.
 Bongsayon



3 or 4 of Probation of Offenders' Act because the accused have caused hurt to his wife whom he has married for 10/11 years and inflicted injury upon her and made her suffer with pain. The accused if is given benefit under this Act shall not have the fear psyche that he can be punished even for beating his own wife and shall not realize the consequence of law breaking.

ORDER

10. In the result from the facts and circumstances of this case and evidences on record, this Court is of the opinion that the prosecution has failed in proving the charge U/S 498A IPC against the accused persons beyond all reasonable doubt and hence the accused are given the benefit of doubt and are acquitted from the said charge.


However the prosecution has succeeded in proving the charge U/S 323 IPC against the accused Jahangir Ali only and hence he is found guilty under this section and is convicted for the same. Since this accused is a first time offender he is sentenced to payment of fine only.

The accused Jahangir Ali is sentenced to pay fine of Rs 1000/- only for committing offence punishable U/S 323 IPC and in default of payment of fine to undergo simple imprisonment for one month..

The fine amount so collected shall be given as compensation to the victim Smti Rashida Begum as provided U/S 357 (1) of the Code of Criminal Procedure. The bail bonds for the accused are extended to another six months.

11. Furnish a free copy of this Judgment to the accused.

12. Judgment is pronounced in the open Court, written in separate sheets of paper and tagged with the case record on this 22nd day of January, 2019 at Bongaigaon, bearing my signature and seal.


22/01/19 -
ADUL C.J.M.
Bongaigaon



Appendix

G.R. Case No.150/16

Witnesses examined by prosecution

PW1- Rasida Begum

PW2- Hazarat Ali

PW3- Kamela Khatun

PW4- Nasiran Bewa

PW5- Md. Wahed Ali

PW6- Kasem Ali

PW7- Md. Abul Kalam

PW8- S.I. Sri. Debojit Sarma

PW9- Dr. Susanta Bhattacharjee

Documents exhibited by prosecution

Exhibit 1- FIR

Exhibit 1(1)- Signature of S.I. Sri. Debojit Sarma

Exhibit 2- Medical report

Exhibit 2(1)- Signature of Dr. Susanta Bhattacharjee

Witnesses examined by accused

None

Documents exhibited by accused

None

S.
22/01/19.

Smti. Leena Doley
Addl. Chief Judicial Magistrate
Bongaigaon

ADDL C.J.M.
Bongaigaon