

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE ::: BONGAIGAON.**GR CASE No. 191/2012.****U/S.498-A/494 IPC.****State of Assam****-Vs-****Sri Debojit Ray.**

*Present: Sri A.U.Ahmed, AJS
Chief Judicial Magistrate,
Bongaigaon.*

Name of the informant:

*Mrs. Anjalee Ray,
S/o Sri Debojit Ray,
Vill- Chiponsila Kaulipara,
PS & Dist. Bongaigaon.*

Advocates appeared:

For the Prosecution: **Mr. T. Bhowmick, Assistant PP.**

For the Defence: **Mr. Arun Kr. Singha.**

Argument heard on: **03.04.2013.**

Judgment pronounced and delivered on: **10.04.2013.**

J U D G M E N T

1. The prosecution case in brief is that on 01.04.2012 the complainant lodged a written ejarah with Bongaigaon PS stating inter-alia that on 10.02.2012 she was got married with the accused person as per Hindu rites and customs socially. After one month of the marriage, the accused demanded Rs.50, 000/- from her father as a dowry. While her father informed the said accused person that he could not afford the same, the accused-husband along with

his parents started torturing her physically and mentally. On 24.03.2012 her accused husband took a girl to his house after making contract of second marriage with her and tortured her (complainant) mentally. On 30.03.2012 at 8:00 PM regarding the demand of aforesaid money as a dowry the accused-husband along with his parents confined her forcibly and asked her to put signatures of three pieces of blank stamp papers. While she refused to put her signatures on the said blank paper she was driven out from her matrimonial home and thereafter finding no alternative took shelter in her parents' house which is situated in the same village. On receipt of the said ejahar, Bongaigaon PS registered a criminal case under section 498-A IPC and started investigation. On completion of investigation, the charge-sheet was submitted under sections 498-A/494 IPC against the accused person. Hence the prosecution case has come up.

2. On completion of appearance of the accused person, copy was supplied to him. Having very carefully gone through the submissions of both sides as well as case diary I have found prima-facie materials under section 498-A/494 of the IPC and as such framed charge accordingly against him. The charges were read over and explained to the accused person to which he pleaded not guilty and claimed be tried.

3. During trial the prosecution has examined as many as 7 (seven) prosecution witnesses. The accused person has been examined under section 313

CrPC. The defence has examined none. Plea of defence is of total denial.

4. **:-POINT FOR DETERMINATION:-**

- (a) *Whether the accused person being the husband subjected the informant to cruelty?*
- (b) *Whether the accused person married another woman during the lifetime of the informant?*

5. **:-DECISION AND REASONS THEREOF:-**

I have very carefully gone through the arguments duly put forward by the Ld. Lawyers of both sides as well as evidence on record. Now let us see the evidence on record.

6. PW1 is Smt. Anjali Ray who is the informant-cum-victim wife of this case. PW2 is Sri Baidyanath Ray who is the father of the informant. PW1 has stated in her testimony that after one month of the marriage, the accused-husband started assaulting her for bringing a sum of Rs.50,000/- from her father as a dowry and the said amount could not be paid to the accused person from her father's house. That on 24.03.2012 the accused made contract of marriage with one Nandita Medhi and took her to his house. After the said marriage, the accused person increased the torturing her. On 30.03.2012 at 8:00 PM the accused person asked her to put signature on three pieces of blank stamp papers. While she refused to put signatures the accused person drove out her from his house after assaulting her. Thereafter, she took shelter in her parents' house and since

then she has been there. On the following day, she lodged an ejahar in the police station. Ext1 is the said ejahar and Ext1(1) is his signature.

7. Supporting the evidence of PW1, PW2 who is the father of the informant has stated in his testimony that the informant him that the accused person started assaulting her on demand of Rs 50, 000/-. On his failure to make payment of the said money the accused person started torturing his daughter. Both PW1 and PW2 have categorically stated that while the informant refused to sign the blank stamp papers, the accused person drove her from his house. Evidence of PW3 is silent regarding harassment made by the accused person towards the informant on any illegal demand. His evidence only shows that the informant is wife of the accused person and at present she has been in her parents' house and also that the accused person married another woman. PW5 is Chilon Roy whose evidence is totally silent as regards demand of Rs 50, 000/- as dowry made by the accused person from the parents' house of the informant-cum-victim wife. PW6 is Sri Bhagal Roy whose evidence is also silent in respect of harassment on the informant made by the accused person on illegal demand of Rs 50, 000/-.

8. There is one discrepancy between Ext1 and Evidence of PW1 and PW2 that it has been stated in Ext1 that the accused person directly asked the father of the informant to pay him a sum of Rs. 50000/- where as their evidence shows that the accused person asked the informant to bring a sum of Rs. 50000/- from her father.

9. PW4 is Smt. Nandita Medhi who has been declared as hostile. As per prosecution case she is the 2nd wife of the accused person. PW5 is Sri Chilan Roy who has stated in his testimony that about ten months back the marriage between the informant and the accused person took place as per Hindu rites and customs. He has further stated that after few days of marriage the accused person took another woman to his house after marrying her and drove out the informant from his house and that the informant has been there.

10. In order to appreciate the rival stands, it would be useful to notice the statutory provisions. **Section 498A** I.P.C. makes "cruelty" by husband or his relative a punishable offence. The word "cruelty" is defined in the Explanation appended to the said **Section. Section 498A** I.P.C. with Explanation reads thus:

498A. 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 purpose of this **section**, "cruelty" means--

(a) Any wilful 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 meet such demand.

11. The fact of the case remains that the informant was in her matrimonial home for 50 days and that the accused person brought one Nandita Medhi on 24.03.2012 to his wife after contracting second marriage with her. There is no evidence on record to show that how the marriage between the accused person and One Nandita Medhi was performed. There is no dispute that the accused person is governed by Hindu Laws. The prosecution has examined the said Nandita Medhi who has been declared hostile. She has clearly stated in her testimony that that the accused person is not her husband and that she has been in her father's house. As per statement of the said Nandita Medhi recorded under section 161 CrPC shows that her marriage with the accused person was solemnized in Bagheswari Temple. Of course, there is no dispute that the informant is the married wife of the accused person. The prosecution has not examined any person from Bagheswari Temple Authority to substantiate that the marriage between the accused person and one Nandita Medhi was taken place there. The prosecution also refrained from examining any person who was present in the temple of Baghesawari while the marriage between the accused person and Nandita Medhi was taken place. The prosecution is found to have refrained from confirming that Nandita Medhi marked as PW4 stated before him that her marriage with the accused person was taken place in Bagheswari Temple. The evidence of the investigating officer shows that he did not examine any person from Bagheswari Temple. There is no evidence on record showing that essential ceremonies for

performing marriage between the accused person and Nandita Medhi were done.

12. 494. Marrying again during lifetime of husband or wife.-- Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Exception.- This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

13. Evidence of PW6 only shows that the accused person after contracting marriage with the informant brought one woman to his house after contracting second marriage with her. His evidence was totally silent that the accused person drove out from his house. His evidence is also silent as regards asking the informant to put signatures on stamp papers by the accused person and her refusal to do so as a result she was driven out from her matrimonial

home. Evidence of PW5 shows that the accused person drove the informant out from his house after bringing one woman to his house on marriage. There is no dispute that at present the informant has been in her parents' house.

14. There is no dispute that the informant was in the house of the accused person as husband and wife for about 50 days. Cross-examination of the informant marked as PW1 shows that the accused person took her from her parents' house without performing marriage ceremonies with her. It has been stated in Ext1 that the accused person asked the father of the informant to pay him Rs 50,000/- dowry. The father of the informant marked as PW2 has admitted in his cross-examination that the accused person never asked him to pay any money as dowry. Considering all aspects I find doubt in the evidence of PW1 and PW2 that the accused person harassed the informant or her father with a view to coercing her or any person related to her to meet an unlawful demand of Rs 50, 000/-. I also find that there is doubt that the accused person contracted second marriage with any woman. The evidence of PW1 is silent what injuries she sustained. The injury report available with case record shows that she sustained only pain and tenderness. I find some sorts of cruelties but the same are not as defined in the Explanation to the section 498A IPC. In my considered opinion, the materials available on record may be relevant for granting the reliefs as prescribed by the section 125 CrPC or the provisions of the Protection of Women From Domestic Violence Act or in a matrimonial dispute i.e. divorce etc. but could not bring home the charge

under Section 498A IPC reliance on the decision made in the Judgment reported in “**MANU/SC/0911/2009**”.

O R D E R

15. *In the result, I find that the prosecution has failed to prove its case against the accused person beyond all reasonable doubts. Hence on benefit of doubts, the accused person is hereby acquitted from the charges brought against him and let him be set at liberty forthwith. The bail bond stands cancelled. Accordingly this case is disposed of on contest. Let the Judgment be up-loaded in the official website.*

16. The Judgment is pronounced and delivered in the open court on this **10th April, 2013** under my hand and seal of this Court.

(Sri A.U. Ahmed)
Chief Judicial Magistrate,
BONGAIGAON.

Dictated and corrected by me.....

(Sri A. U. Ahmed)
Chief Judicial Magistrate,
BONGAIGAON.

:A P P E N D I X:

The prosecution examined:

1. PW1- Smt. Anjali Ray.
2. PW2- Sri Baidya Nath Ray.
3. PW3- Sri Pramod Das.
4. PW4- Sri Nandita Medhi.
5. PW5- Sri Chilon Ray.
6. PW6- Sri Bhugal Ray.
7. PW7- Sri Sikhar Bordoloi.

The prosecution exhibited:

1. Ext1- Ejahar.
2. Ext2- Charge Sheet.

The Defence examined & exhibited: - Nil.

(A. U. Ahmed)
Chief Judicial Magistrate
BONGAIGAON.
