

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE ::::: BONGAIGAON.

GR CASE No. 105/2012.

U/S. 498-A IPC.

State of Assam

-Vs-

Sk. Sefajuddin Ahmed.

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

Name of the informant:

Musstt. Manjura Khatun,
D/O Md. Nurul Haque,
Vill- Bhadaipara, PS-Abhayapuri,
Dist- Bongaigaon.

Advocates appeared:

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

Argument heard on: *07.06.2013.*

Argument re-heard on: *21.06.2013*

Date/s fixed for Judgment: *21.06.2013/ 27.06.2013.*

J U D G M E N T

- 1.** This is a case for subjecting a wife to cruelty by her husband.

- 2.** The prosecution case in brief is that on 14.12.2008 the informant was got married with the accused person as per Islamic Shariat through registered Kabinnama socially. After marriage she was taken to the house of the accused person where she started

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leading conjugal life as husband and wife with him. At the time of marriage, the articles mentioned in the ejahar having value of Rs.1, 42,300/- were given to the accused person as dowry. After few days of the marriage the accused person on advice and instruction of his parents' assaulted her every day on demand of money. In order to making conjugal life permanent and peaceful she endured the torture inflicted upon her by the accused person without objection. From their wedlock she gave birth to a female child named Shenaj Akhtiar Parbin who is at present 17 months old. About 14 months the accused person contracted another marriage on advice of his parents. After contracting second marriage the accused person along with his parents increased quantum of the torture on her on demand of money. On 22.11.2011 the accused person along with his parents drove out her from his house after assaulting her on demand of Rs.50, 000/- but at the intervention of the elderly people the matter was amicably settled and in view of the settlement made by the elderly people she was sent back to her matrimonial home for leading conjugal life with the accused person. On 15.01.2012 at 12:00 Noon the accused person on instruction of his parents drove out her from his house after assaulting her on demand of Rs.50,000/- as dowry along with her minor child keeping all the articles given to the accused person at the time of marriage by her parents. Finding no alternative she took shelter in her parents' house. As the accused person and his family members refrained from keeping any relation with her or from taking her back for a long period on 08.02.2012 she came to the house of the accused person back and desired to take the articles given at the time of marriage back but the accused person did not allow her to do so. The accused-husband along with his parents threatened to kill her if she would come back for taking the articles further. On 14.02.2012 the informant to that effect lodged a written ejahar with

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Bidyapur Out Post and the same forwarded to the O/C Bongaigaon PS for registering a criminal case. On receipt of the written ejahar, Bongaigaon PS registered a criminal case under sections 498-A/34 IPC. On completion of investigation, the charge-sheet was submitted under section 498-A IPC against the accused-husband. Hence the prosecution case has come up.

3. 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 found prima-facie materials under section 498-A of the IPC against him and as such framed charge against him accordingly. The aforesaid charge was read over to the accused person to which he pleaded not guilty and claimed to be tried.
4. During the trial prosecution has examined as many as 9(nine) prosecution witnesses. The accused person has been examined under section 313 CrPC. The defence has examined none. The plea of defence is of total denial.
5. ***:POINT FOR DETERMINATION:***
(a)Whether accused person being husband subjected the informant to cruelty?
6. ***:DECISION AND REASONS THEREOF:***

I have very carefully gone the arguments duly advanced by the Ld. Lawyers of both sides as well as evidence on record. It has been strenuously contended that the prosecution has

failed to prove its case against the accused person. On the other hand refuting the

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aforesaid submission, the Ld. Assistant PP has submitted that the prosecution has sufficiently succeeded in establishing its case beyond all reasonable doubts. Prior to rebutting rival submissions it would be apposite to scan the evidence on record. Hence I would like to move on to evidence on record.

7. PW1 is Musstt. Manjura Khatun who is the informant-cum-victim wife of this case. She has stated in her testimony that on 14.12.2008 she was got married with the accused person as per Islamic Shariat. At the time of marriage from her parents house a Sofa set, one Paleng, one Steel Almirah, one Alna, one Tea table, one Gas Cylinder, Golden ornaments, utensils having value of Rs. 1,50,000/- were given as dowry. After one year of the marriage the accused person started pressurizing her to bring a sum of Rs. 50,000/- from her parents' house as dowry. Thereafter, she brought Rs. 25,000/- from her parents house and gave the same to the accused person as a dowry. At that time she became pregnant and the accused husband threatened that if she gave birth to female child matter would be otherwise. After seven days of birth of her female child, the accused person made contract of another marriage with a women and took her to his house as his second wife. After four month of the second marriage made by the accused person, one day at noon he drove out her along with her child for non-payment of the rest amount of money demanded. Thereafter she took shelter in her brother-in-law's house. After staying there three days finding no alternative she took shelter in her parents' house. During her stay in her matrimonial home the accused person never embraced her female child with affection. After waiting a long period of 17

months after the occurrence for amicable settlement, finding no alternative she became compelled to lodge this case. Ext1 is the ejahar and Ext1(1) is her signature.

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- 8.** PW2 is Smt. Hasina Khatun who is the wife of elder brother of the informant. She has stated in her testimony that on 14.12.2008 the informant was got married with the accused person as per Islamic Shariat. After 2/3 months of the marriage, accused person started torturing the informant. Accused pressurized the informant for bringing money as a dowry and assaulted her. At the time of marriage a cash amount of Rs.50, 000/- and some articles were given to the accused person. Again the accused person assaulted the informant on demand of Rs.50, 000/-. While the informant became pregnant the accused person tortured her more than earlier he did. The informant gave birth to a female child. After seven days of birth of said female child, the accused person drove out her from his house after assaulting her. Thereafter, she came back to their house and since then she has been there. After driving out the informant from his house the accused person married another woman. The accused person neither kept any relation with the informant nor provided any maintenance to her for herself and her daughter. The accused person has a son from his second wife.

- 9.** PW3 is Md. Abdul Salam who is the elder brother of the informant-cum-victim-wife. He has stated in his testimony that on 14-12-2008, informant sister was got married with the accused person. After one year of the marriage, the accused person started assaulting the informant asking her to bring a sum of Rs. 50, 000/- from their house as dowry. On 22-11-2011 the accused person

drove the informant from matrimonial home after assaulting her on demand of money and there after she took shelter in their house. There after their family members and elderly people sent the informant to matrimonial home back after consoling her. On 15-01-2012 the

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accused person drove out her again from his house along with her child and there after she took shelter in their house and since then she has been in their house. While the informant in their house, the accused person married again another woman.

10. PW4 is Md. Sorhab Ali who has stated in his testimony that the informant and the accused person are husband and wife. Since completion of one year of the marriage, he has been hearing shouting of quarrel taken place between the complainant and the accused person. One day he saw the accused person assaulting the informant with lathi. There after brothers of the informant came and neutralized the situation. After few days of the aforesaid incident the accused person drove out the informant from his house along with her child after assaulting her. The informant took shelter in her parents' house.

11. PW5 is Md. Surat Ali who is the neighbourer of the accused person. He has stated in testimony that the informant and the accused person are husband and wife. He heard about the quarrel taken place between the informant and the accused person. The informant has been in her parents' house along with her child.

The accused person made a contract of marriage with another woman with whom he has been staying at present in house.

- 12.** PW6 is Suna Ullah Shiekh who has stated in his testimony that the informant and the accused person are husband and wife. He heard about the quarrel taken place between the accused

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person and the informant. He also heard that a Mel was convened in the village for 2/3 times regarding the dispute arisen between the informant and the accused person. The Informant has been in her parents' house since the accused person contracted second marriage.

- 13.** PW7 is Md. Abul Hussain who has stated in his testimony that the informant and the accused person are husband-wife. The informant has not been at present in the house of the accused person. The accused person made contract of the second marriage and has one son from the second wife.

- 14.** PW8 is Md. Abdul Jabbar who is the brother of the informant-cum-victim-wife. He has stated in his testimony about three years back the informant was got married with the accused person socially. At the time marriage as dowry some golden & silver ornaments, wooden paleng, wooden sofa sets, Steel Almirah etc were given. After one month of the marriage the accused person started torturing her sister on demand of money. Regarding demand of money made by the accused person, a Mel was held. The informant gave birth to a female child. After birth of the child, the accused person made a contract of marriage with another woman.

After second marriage, the accused person drove out the informant from his house with her child as she could not bring the money he demanded and there after she took shelter in their house.

- 15.** PW9 is Babul Ch. Das who is the Investigating Officer. He has stated in his testimony that on 15-02-2012 he was attached to Bidyapur Out Post as I/C and on that day he received a written ejahar from the informant. There after he sent the ejahar to Bongaigaon PS for registering a criminal case by opening GD Entry.

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On the same day he recorded statements of the informant and her family members. On completion of investigation, he submitted charge sheet under section 498-A IPC against the accused person. Hence the prosecution has come up. Ext2 is the charge sheet.

- 16.** Ext1 shows that the accused person pressurized the informant to bring a cash amount of Rs. 50, 000/- from her parents. Ext1 is silent that Rs. 25, 000/- out of Rs. 50, 000/- was paid to the accused person as dowry as stated by the informant marked as PW1. PW2, PW3 and PW8 are the brothers and sister-in-law. Evidence of PW8 who is the own elder brother of the informant is totally silent how much amount of money the accused person demanded as dowry. It is evident that the accused person was in a rented house separately with the informant for about six months. It is also evident that the parents of the accused person are service holders. The evidence of the informant shows that she was happy with the accused person for one year peacefully.

17. The defence case is that the informant on her good will left her matrimonial home as she disliked staying in joint family with the accused person. It is evident that the accused person is the only son of his parents who are service holders. It is also evident that after institution of this case, the accused person brought a civil suit against the informant for restoration of conjugal life. There is no dispute that at the time of marriage between the informant and the accused, articles having value of Rs. 1, 50, 000/- were given to him from her parents' house. There is corroborated evidence on recorded that the accused person made contract of marriage with another

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woman. Ext1 shows that immediate after marriage, the matter of torture on demand of money was started as a result, finally 15-01-2012 she was kicked out from her matrimonial home along with her child and on 08-02-2012 she came to her matrimonial home for taking her articles which were given at the time of marriage back and she was not allowed to take the said articles back. This case was lodged on 15-02-2012. There is no evidence on record showing that on 08-02-2012 the informant went to her matrimonial home for taking the articles given to the accused person at the time of marriage.

18. PW2 has stated in her testimony that cash amount of Rs. 50, 000/- was given to the accused person at the time of marriage. In contrary, Ext1 and Evidence of PW1 and PW3 show that no cash was given to the accused person at the time of marriage. The houses of PW5 and PW7 are near the house of the accused person and their evidence shows that the accused person

married another woman during subsisting of the marriage between the informant and him and he has a son from his second wife. PW5 has clearly stated in his evidence that the informant started staying in her parental home while the accused person married another woman and took her to his house as second wife.

19. It has been submitted by the Ld. Defence Counsel that there is evidence that regarding torture on demand by the accused person for several times Mel was held but non-examination of villagers is fatal to the prosecution. PW6 has stated in his testimony that regarding the dispute arisen between the informant and the

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accused person for 2/3 times Mel was held in the village. Considering all aspects I find force in the aforesaid submission. He has further submitted that no case under 498-A IPC made out against the accused person reliance of the case laws given below:-

- a) *Sushil Kumar Sharma Vrs Union of India &Anr reported in "AIR 2005C 3100"*
- b) *Girdhar Shankar Tawade Vrs State of Maharastha reported in "AIR 2002 SC 2078"*
- c) *Dilip Singh Vrs State of Assam reported in "2011(2) GLJ 391"*
- d) *Taja Doley & others Crs State of Assam reported in "2011(2) GLJ 459"*

In view of discussions made above, I find doubt that the accused person harassed the informant on demand of Rs 50,000/- as a dowry.

20. There is un rebutted evidence that the accused person married another woman while the informant gave birth to a female

child and the accused person refrained from embracing and accepting the child as father. Whether the aforesaid acts come within purview of mental cruelty or not. The section 498-A of the I.P.C has been inserted by the Legislature to stop all sorts of cruelty towards a married women and the Court requires examining the evidence in each case, keeping in mind the social scenario and the very purpose of the legislation. It is the solemn duty of the husband to maintain his wife with all dignity and humanity. It is the husband who is responsible to protect her. It has been held in the *Judgment-Ranjan Das-Vrs-The State of Tripura reported in "MANU/GH/0101/2012"* that second marriage made by the husband amounts to cruelty towards his subsisting wife and relevant Para reads as follows- "8. The informant made general allegation against her in laws but there is nothing specific against them. She made allegation that her

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husband married again the acquitted accused Laxmi Malakar and living with her which might have compelled her to leave the matrimonial home. Under such circumstances, mental torture by the accused husband, Ranjan Das, was correctly established but in my considered opinion, the accused petitioners, Balaram Das and Sumitra Das, being the father-in-law and mother-in-law, may have supported their son, Ranjan Das in the exercise of cruelty but I find nothing that they have actively participated in the exercise of cruelty on the informant and as such, the accused petitioners, Balaram Das and Sumitra Das may get the benefit of doubt."

21. It has been submitted by the Ld. Assistant PP that a young woman unless was assaulted and harassed in the matrimonial home, specially by her husband, she will never leave

the matrimonial home to be a burden in parental home. There is undisputed evidence on record that the informant is the legally married wife of the accused person and that during subsistence of the said marriage, the accused person again married another woman and took her in his. It is also found that the informant alleged that the accused person never embraced her female child as father. Her evidence also shows that the accused person does not want to be father of female child. It is evident that after seven days from the date on which the informant gave birth to the female child, the accused person again married another woman. There is no evidence on record showing that the accused person married another woman with knowledge and consent of the informant. It is incumbent to a muslim husband to discuss about his second marriage with his 1st wife in a gentle and pleasant manner. In view of the observation made in the aforesaid Judgment it can be said that contracting second marriage and living with the

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second wife by the accused person clubbed with his apathy towards her female child caused mental cruelty towards the informant. The section 498-A IPC is reproduced below:-

“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 purposes 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 to meet such demand”

22. In the result, I find the accused person guilty under section 498-A IPC and accordingly he is convicted.

23. On the point of sentence, the accused person is heard and to that effect his statement is recorded. The offence in question is a crime against the society. Considering nature of the offence and age of the accused person, the benefit laid down under section 360 of the CrPC is not shower upon him. In my considered opinion the accused person deserves to be served.

24. The accused person has prayed for leniency in sentencing him. The accused person has stated in his statement that he has to look after his old aged parents being only son. It has been submitted

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by the Ld. Defence Counsel that the informant has already brought a case under section 125 CrPC against the accused person pending for trial. It has become crystal clear that the accused committed alleged occurrence with cool brain. ***Considering all aspects, the accused person is hereby ordered to suffer RI for 6(six) months and to pay a fine of Rs 1000/- (Rupees One thousand only) i/d SI for 2 months. Set off earlier detention if any. Let the fine money be paid to the informant as compensation if paid. Let a copy of the Judgment be furnished to the accused person at free of cost. Accordingly this case is disposed of on contest.***

25. The Judgment is pronounced and delivered in the open Court on this 27th June, 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 N N E X T U R E:

The Prosecution examined:

1. PW1- Smt. Manjura Khatun.
2. PW2- Smt. Hasina Khatun.
3. PW3- Md. Abdul Salam.
4. PW4- Md. Sorhab Ali.
5. PW5- Md. Surat Ali.
6. PW6- Md. Suna Ullah Sheikh.
7. PW7- Abul Hussain.
8. PW8- Md. Abdul Jabbar.
9. PW9- Sri Babul Ch. Das(IO).

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The Prosecution exhibited:

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

The Defence examined & exhibited: - Nil.

Magistrate

(A. U. Ahmed)
Chief Judicial

BONGAIGAON.
