

IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE, BONGAIGAON

PRESENT: S. HANDIQUE, AJS

C.R. Case No. 7/16

(U/S 12 of the Protection of Women from Domestic Violence Act, 2005)

Resmina Khatun.....Aggrieved woman

Vs.

1. Mojidul Islam

2. Majeda Begum

3. Romjan Ali

4. Mohibul Islam.....Respondents

For 1st Party: Mr. M. Islam

For 2nd Party: Mr. S. Sarkar

Evidence recorded on: 16-3-16, 13-5-16

Arguments heard on: 18-5-16

Judgment delivered on: 25-5-16

JUDGMENT

1. The instant proceeding is filed under the Protection of Woman from Domestic Violence Act, 2005, hereinafter called the 'Act', by the aggrieved woman against the respondents. The case of the aggrieved woman is that she is the legally married wife of respondent no. 1 and they led conjugal life for few months. According to the aggrieved woman, her parents gave furniture, cycle, ornaments etc. at the time of marriage. However, respondents demanded Rs 40,000/- after two years of their marriage and started torturing her physically and mentally as

she could not satisfy their demand. Several village meetings were also held regarding the alleged demand and torture but to no avail. She tolerated all their torture and meanwhile a girl child was born to her. The respondents put a false blame on her that she tried to have illicit relationship with respondent no. 3. She alleged that about ten months back she was physically assaulted by respondent no. 1 and then he eloped with the wife of another man. According to her, the respondent no. 1 has been residing in Goalpara and threatened her over phone that he would divorce her. Thereafter, on 28-6-15 she was assaulted by the respondent no. 2-4 and driven out with her five years old child. As such she took shelter in her parental house. She also alleged that the respondent no. 2-4 visited her parents' house on 27-9-15 and threatened them to leave the place or else her modesty would be outraged by hired goons. Again on 2-1-16 the respondent no. 3 visited her and warned them to either leave the place or to face consequences if any case is filed. Hence, she filed this case and prayed for the following reliefs:

- i. Protection order u/s 18 of the Act as the respondents have threatened her to withdraw the police case*
- ii. Residence order u/s 19 of the Act*
- iii. Monetary relief of Rs 1,00,000/- u/s 20 of the Act as damages*
- iv. Compensation Rs 2,00,000/-*

2. In response to the notice the respondent no. 1 did not contest the suit and the case proceeded ex-parte against him. The respondent no. 2, 3 & 4 filed their written statement denying the case of the aggrieved woman in toto. The respondents admitted that the aggrieved woman is the wife of respondent no. 1 but they denied all other material allegations. The respondents contended that since after six months of the marriage the aggrieved woman and the respondent no. 1 started living separately from them, as such they are no way connected with this case. They denied that the aggrieved woman had brought any stridhan article with her at the time of marriage. They also denied to have made any demands and contended that the aggrieved woman and respondent no. 1 did not keep any relation with them and the respondent no. 1 even applied for NRC separately. Thus they prayed to dismiss the case.

3. The aggrieved woman adduced evidence of herself and her mother. Respondents adduced evidence of three witnesses. As marriage is admitted, the following points for determination have been framed.

POINTS FOR DETERMINATION:-

(i) Whether the respondents being in a domestic relationship in the same shared household, subjected the aggrieved woman to acts of domestic violence?

(ii) Whether the aggrieved woman is entitled to get the reliefs as prayed for from the respondents?

DISCUSSIONS, DECISIONS AND REASONS THEREOF:

DECISION ON POINT NO. 1

4. In the present case the respondent no. 2, 3, 4 have admitted the marriage and the fact that she was in a domestic relationship with them for six months after marriage. Respondent no.1 is her husband, respondent no. 2 is her mother-in-law, respondent no. 3 is her father-in-law and respondent no. 4 is her brother-in-law. Let me now see if any act of domestic violence was committed or not.
5. **PW1 Resmina Khatun**, the aggrieved woman stated that she got married to Majidul seven years ago and their married life went off well for about two years. Her parents had given cash Rs 60,000/-, furniture etc. at the time of marriage, but after two years of marriage Majidul started demanding Rs 40,000/- from her. As she showed her inability to fulfil his demands she was physically tortured. She visited her mother and told her about it. Her mother showed her inability to fulfil the demand and so she came back. She endured his tortures and after three years of her marriage a girl child was born to her. She alleged that Majidul used to neglect her and even her father-in-law and mother-in-law declined to provide maintenance to her. Meanwhile her husband was caught having an illicit relationship with a girl and when she asked him about it she was beaten up. About 9 months ago her husband eloped with that woman. However, she stayed in her matrimonial home for about three months after her husband left her. She was forced to earn her livelihood by begging and working in other's house as her in-laws refused to maintain her and quarrelled with her whenever she asked for maintenance. She alleged that her father-in-law hit her with a shoe. When she

expressed her mind to go home he gave her Rs 100/-. She went to her parents' house and stayed there for two months. During that time her in-laws kept visiting her and tried to take her daughter with them. Her mother-in-law abused her by addressing her as 'characterless' and quarrelled with her. Her mother-in-law told her neighbours that she is characterless and so she should not be allowed to stay in the village, therefore she came to Bongaigaon. She was again threatened by someone in Bongaigaon that she would face dire consequences if she files any case. She claimed Rs 1,00,000/- for maintenance and also a house for her residence.

6. In cross examination she testified that there are houses near her matrimonial home. She stated that till five years of her marriage they lived with the respondent and then got separated. She stated that her father-in-law had arranged for their separate kitchen. She denied that she and her husband set up their separate household after six months of the marriage. She also denied that she used to stay separately from the other respondents till her return to the parental home. She denied that she has applied for NRC separately. She stated that on 28-6-15 her mother-in-law and sister-in-law had come and many people gathered. She stated that though Jahirul and Majibar were present when the respondents tried to beat her up but they have not been made witnesses in this case.
7. **PW2 Rejia Begum** stated that her daughter Resmina was married to respondent no. 1 about seven years ago and their conjugal life went off well for two years. Thereafter quarrels started between them. She stated that she used to visit them and Majidul used to ask her for money for opening a shop and also for a vehicle. He also demanded money from her over phone. She told him that she was not in a position to fulfil his demands, so quarrels started between the parties again. Meanwhile Majidul developed an illicit relationship with Manik's wife and eloped with that lady. He also beat up Resmina before eloping with that lady. Resmina stayed in the matrimonial home for three months thereafter. But when she asked for maintenance from her in-laws they tried to kill her and also put false blame on her. So Resmina came back. Thereafter, her mother-in-law visited her and announced in the public that Resmina is characterless and also threatened to drive them out of the house. In the month of January three unknown persons came and threatened them not to file any case. She stated

that they are staying in a rented house and maintaining Resmina and her daughter by working in other people's houses.

8. In cross examination she stated that no one from the village of the respondents would like to depose in her favour. She alleged that the other party used to call Resmina unchaste whenever they quarrelled and one day she beat her daughter out of anger. She stated that Resmina and Majidul used to stay with the other respondents after marriage. She denied that Resmina and Majidul used to stay separately from the family. She stated that she heard about the alleged torture from Resmina and used to visit her almost every day. She also stated that a village meeting was called, but she does not remember the date.
9. The plea of the respondents is that Resmina and her husband got separated from the joint family and started their separate kitchen and therefore they are no way connected with the aggrieved woman. To prove their plea the respondent no. 2,3,4 adduced evidence of two PWs.
10. **DW1 Ramjan Ali** is the respondent no. 3. He deposed that they never instigated respondent no. 1 to torture her as the couple used to stay separately from them. He stated that after six months of the marriage the couple got separated from them in presence of the villagers. According to him, since then the couple has not maintained any relation with them. He also stated that Respondent no. 1 has applied for NRC separately. In cross examination he stated that he admitted his grand-daughter in a school but he does not know where she is studying now. He stated that he has a cloth shop and earns about Rs 3,000/- per month. He denied that his monthly income is Rs 30,000/- and has landed property. He stated that respondent no. 1 had a computer shop. He denied that he drove out Resmina and never tried to know about her well being. He could not say when he called the villagers and the couple got separated from the family. He showed his ignorance if respondent no. 1 has eloped with someone else's wife. He denied that respondent no. 1 has submitted NRC forms separately in collusion with them. He denied that they had blamed Resmina as a characterless woman and he hit her with a shoe. He admitted that Resmina has no income.
11. **DW2 Rafiqul Islam** deposed that he knows the parties. He stated that after marriage Resmina and Majidul lived happily for 6/7 months and then they started to live separately from their family. He stated that Resmina and Majidul did not keep any relations with the other respondents. He was not present during the

marriage. He stated that he did not hear that the respondents took money at the time of marriage or that she was tortured. In cross examination he stated that Ramjan is his brother by relation. He denied that Ramjan's monthly income is Rs 30,000/- and stated that he never took any interest in Ramjan's family matters. He expressed his ignorance if the respondents had made any demands and tortured Resmina. He was not present at the time of marriage so he does not know if Resmina had brought any goods with her or not. He does not know when Majidul got separated from his parents. He testified that after marriage Resmina and Majidul used to stay in the same compound with the accused till she left the matrimonial home.

12. **DW3 Aynal Hoque** has stated that the aggrieved woman and her husband got separated from the joint family after six months of their marriage but he testified during cross examination that the couple used to stay in Ramjan's house after marriage. He stated that respondent no. 3 is a tailor.
13. Since the respondent no.1/ husband of the aggrieved woman has not contested the case and the case proceeded ex-parte against him, whatever allegations she brought against him stands proved. The evidence of PWs as well as that of DWs amply proves that the respondent no. 1 developed an illicit relationship with another person's wife and eloped with that woman few months before filing of the case. He has not returned to her or taken any news of her and her minor child. This is one kind of mental harassment. She has alleged that the respondent no. 2-4 drove her out after her husband left her and they have not provided her with any maintenance, instead tried to tarnish her image by calling her unchaste or characterless in front of the public. This allegation remained un-rebutted during cross examination of PW1 and PW2. PW1 stated that she was once assaulted by her father-in-law with a shoe and this allegation could not be belied by the defence. After her husband eloped with another woman the aggrieved woman stayed in her matrimonial home for few months and she was not treated well by her in-laws and this surely aggravated her agony.
14. The respondents though tried to prove that the aggrieved woman and respondent no. 1 stayed separately from them after six months of marriage but they have been unsuccessful in proving it. PW1 testified during cross examination that her father-in-law arranged for their separate kitchen after five years of marriage. But she did not state that they lived in a separate compound. In fact DW2 testified that the aggrieved woman stayed in the same compound with the

respondents till last. Even if the aggrieved woman and her husband had a separate kitchen it is not proved that they did not maintain any relations with the other respondent because they lived within the same compound and this can be considered as sharing the same household.

15. So it is proved that the respondents committed acts of domestic violence against the aggrieved woman during her stay in the matrimonial home and also mentally harassed her even after she left her matrimonial home.
16. Now coming to the income capacity of the respondents it is seen that the aggrieved woman has not stated anything on this. DW1 has admitted that he has a cloth shop but his contention is that his monthly income is only Rs 3000/- . He also stated that his son Majidul used to run a computer shop. The respondent no. 1 as well as respondent no. 3, 4 are able bodied men. Though the actual income of the respondents is not on record but it cannot be believed that respondent no. 3 is maintaining his family with a meagre income of Rs 3,000/- per month in the present day economic scenario. Respondent no. 2-4 took the plea that they have no relationship with respondent no. 1 now and therefore they cannot be compelled to maintain the aggrieved woman. DWs have testified that the aggrieved woman has a minor daughter to look after and she has no income. She is staying with her mother in a rented house in Bongaigaon and her mother is maintaining her. She has a minor daughter who is studying in a school. Therefore, she is in need of financial help. The respondent no. 1 has left her high and dry. But respondent no. 2, 3, 4 being her close relations cannot shy away from their responsibility to the aggrieved woman and her minor daughter only on the plea that respondent no. 1 no longer stays with them.
17. Considering all the above, I decide that the respondents being in a domestic relationship with the aggrieved woman committed acts of domestic violence and thus liable as per law.

ORDER

18. Final order is passed today in the open court. The petition u/s 12 of the Protection of Women from Domestic Violence Act is allowed.
19. The respondents are prohibited from repeating any of the acts of violence against the aggrieved woman under section 18 of the Act and are directed to execute a bond of Rs 5000/- assuring not to commit domestic violence in any form in future.

20. The prayer for Residence Order under Section 19 of the Act is allowed. The respondents are to provide a suitable alternative accommodation to the aggrieved woman or to pay Rs 3000/- per month to the aggrieved woman towards rent.
21. Under Section 22 of the Act, the respondent no. 1 is directed to pay Rs 50,000/- to the aggrieved woman and respondent no. 2,3,4 are directed to pay either jointly or severally Rs. 50,000/- (Rupees Fifty Thousand only) as compensation to the aggrieved woman for the physical and mental torture on her and all the acts of domestic violence committed against her and as costs for the proceedings. The reliefs given shall come into force from today i.e. the date of order.
22. Given under the hand and seal of the court on 25-5-16.

S. Handique
SDJM(S), Bongaigaon

APPENDIX

PETITIONER SIDE

PW1..RESMINA KHATUN

PW2..REJIA BEGUM

DOCUMENTS..NONE

RESPONDENT SIDE

DW1..RAMJAN ALI

DW2..RAFIQUL ISLAM

DW3..AYNAL HOQUE

DOCUMENTS..NONE