

IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE (S), BONGAIGAON
PRESENT: S. HANDIQUE, AJS

Misc. Case No. 42/15
(u/s 125 Cr. P.C.)

Somela Khatun

Vs.

Imdadul Islam

For 1st Party: Mr. P. Baidya

For 2nd Party: Mr. D.S. Hoque

Evidence recorded on: 11-12-15, 31-3-16

Arguments heard on: 30-4-16

Judgment delivered on: 11-5-16

JUDGMENT

1. The present case u/s 125 Cr. P.C has been filed by Somela Khatun against her husband Md. Imdadul Islam claiming maintenance from him. The 1st party has stated that her marriage was solemnised with the 2nd party on 22-3-14 and they led their conjugal life in the family of the 2nd party at Barpeta. At the time of marriage her guardians gave one bicycle, and house hold items as per demands of the 2nd party. They have a child aged 6 months out of their wedlock. According to her, the 2nd party demanded money from her after two months of their marriage. He at times demanded Rs 10,000/- or Rs 20,000/- and physically tortured her on her refusal. Moreover, the 2nd party maintained illicit relations with his sister –in-law and when she asked him to distance himself from his sister-in-law he acted more violently. She was made to do household chores

beyond her physical capacity. On 5-1-15 he asked her to bring Rs 1,00,000/- from her mother and on her refusal she was beaten and abused in filthy language. She was then asked to call her mother and when her mother arrived she was handed over to her mother. Her mother and brother stayed in her matrimonial home for two days and tried to solve the matter but the 2nd party made it clear that unless his demand is fulfilled she will not be accepted in her matrimonial home. Thus she was compelled to leave her matrimonial home when she was seven months pregnant and gave birth to her child in her parents' house. She waited for her husband to come and take her back but he did not come and he did not even responded to her calls. Thus finding no alternative she had to file a case u/s 498 (A) IPC. According to her, the 2nd party has an RCC building, 20 bighas of land, two fisheries and earns about Rs 30,000/- per month from his business. On the other hand she has no means to support herself. Hence, she claimed maintenance @ Rs 5,000/- each per month for herself and her child from the 2nd party.

2. In response to the case lodged by the 1st party, the 2nd party appeared and contested the case by filing his written statement. He admitted that the 1st party is married to him, but he denied to have tortured her. He denied that there was any demand from his side and rather stated that he gave her ornaments, clothes etc according to his capacity at the time of marriage. He denied to have made any such demands from her. He stated that the 1st party used to keep an illicit relationship with a man from her locality and she left the matrimonial home willingly and did not return when he went to bring her back. He also stated that the 1st party left for her parental home with her mother for the delivery of the child. He thereafter went to bring her back several times but she demanded him to stay with her parents. On 22-3-15 his elder sister went to see the new born baby but the mother of the 1st party threw away the gifts and forced his sister to leave the house. Thereafter his brother-in-law Sajahan Ali, sister and Mokibul Islam visited the 1st party in order to bring her back but in vain. Then again on 3-5-15 he and his brother-in-law Sajahan Ali visited her but she refused to come. He also stated that he had to get separated from his joint family after marriage at the instance of the 1st

party but she again pressurised him to sell his portion of the property and to shift to her parents' house. As he did not agree to her proposal she left the matrimonial home. He stated that he is unemployed and has not source of income and unable to provide the 1st party with maintenance.

3. In view of the pleadings of the parties, I deem it fit to frame the following points for determination in this case:

POINTS FOR DETERMINATION

- I. *Whether the 1st party has sufficient reasons for not staying in her matrimonial home and whether the 2nd party has neglected her and his child in spite of having sufficient means?*
- II. *Whether the 2nd party is liable to pay maintenance to the 1st party and his daughter @ Rs 5,000/- each per month as prayed for?*

4. During trial both the parties led oral evidence. Heard arguments from both the sides. Perused the materials on record. Let me take up the points for discussion.

DECISIONS AND REASONS THEREOF

DECISION ON POINT NO. I & II:

5. Both the points are taken up together for convenience of discussion. As asserted by the 1st party in her pleadings there was dowry demand at the time of marriage and she was tortured in her matrimonial home for not fulfilling their dowry demands. Now let me see what she has deposed during trial.
6. **PW1 Somela Khatun** is the 1st party. She deposed that she got married to the 2nd party on 22-3-14 and led her conjugal life for seven months. They have minor daughter out of their wed lock. According to her, there were no demands at the time of marriage but her parents gave few goods to her. she stated that the 2nd party started torturing her after two months demanding Rs 1,00,000/-. She stated that after the death of his

mother-in-law his family started torturing her. According to her, her brother-in-law, sister-in-law used to abuse her and did not allow her to talk to her husband and also tried to kill her with a dagger. She was physically tortured whenever she asked for his explanation for his late arrival at night. He used to ask her to die or to consume poison. He did not allow her to talk on the mobile phone and asked her to bring one from her parents. She was then driven out when she was six or seven months pregnant. She had to stay outside as no one from the neighbourhood gave her shelter. She then called her mother from one neighbour's phone. When her mother and younger brother arrived her husband insulted them. Her mother and brother stayed for two days and on 8-1-15 she was sent home with her mother and brother. She stated that her husband has 20/30 bighas of land, 2 fisheries, cattle etc. and he earns Rs 30,000/- per month. She stated that her husband did not take her news even while she was seriously ill after child birth.

7. During cross examination she stated that nothing was given from her parents' side at the time of marriage. She denied that she came home for delivery of the child. She denied that the 2nd party had come to take her back and she did not even give him the documents of the child for NRC update. She denied that her husband got separated from his joint family on her pressure. She also denied that the 2nd party's sister had come and she threw away the gifts which were brought for the child. She denied that the 2nd party did not make any demands. She also denied that the 2nd party has no land and fishery and she has illicit relationship with someone. She on one occasion stated that she did not tell any neighbours about it but she later on stated that she had informed the neighbours. She testified that her sister-in-law got married much before the wedding. She also denied that she has any illicit relationship with someone else.
8. Let me peruse the defence evidence now. **DW1 Imdadul Islam** is the 2nd party. He deposed that after 3 months of their wedding he and the 1st party started staying separately. He stated that at the time of delivery the 1st party went home without his left the matrimonial and did not even inform him at the time of delivery of the child. He denied to have tortured her demanding dowry. He admitted that he has two bighas of land and he

cultivates the land. He stated that he is always ready to take her back. During cross examination he admitted that Somela's brother and mother came to his house on 1-1-15. He denied that his in-laws had come to pacify him. He also denied that he had demanded Rs 1,00,000/-. He admitted that he has a fishery measuring 20 lechas and an RCC building. He stated that the 1st party has filed a case u/s 498 (A) IPC against him. He denied that he did not go to bring her back. He denied that he earns Rs 30,000/- from his RCC building.

9. **DW 2 Mokibul Hussain** deposed that the 1st party left her matrimonial home with her mother while she was pregnant. He stated that he had gone to bring back 1st party twice but she refused to come as they are poor. According to him, Somela had placed the condition if all the people who were present at the time of marriage would come to take her back she would return. In cross examination he denied his knowledge as to what happened between the parties. He stated that the 2nd party has a fishery and one RCC building. But denied that the 2nd party's income is Rs 30,000/- per month. He stated that the 2nd party still lives alone in his separate house.
10. **DW3 Sajahan Ali** is the husband of 2nd party's elder sister. He stated that there were no demands at the time of marriage. According to him, he knows about the happenings at his in-law's house but no one told him why the parties fought. He stated that on 11-4-15 and 3-5-15 he had gone to bring Somela back but she did not return and instead told them that unless all the persons who were present during her wedding come to take her back she would not return. He stated that Somela wanted the 2nd party to sell his portion of the land and to stay with her parents. He stated that the 2nd party has got 2 bighas of land in his share after partition. He stated that the parties lived separately from the joint family after marriage. He stated that the 2nd party has an Assam type house and he has no building. During cross examination he stated that the 2nd party has a fishery and he heard that Somela was brought home by her mother. He denied that the 2nd party earns Rs 30,000/- as rental.
11. If the pleading of the parties is read in consonance with their evidence, one point becomes clear that though the parties made character

allegations against each other they did not stick to that allegation during trial. The 1st party in her pleadings stated that there were dowry demands at the time of marriage and the same was fulfilled, but she admitted during cross examination that her parents did not give her anything. She did not state during trial that there were demands before marriage also. Thus this allegation of demand before marriage is negated during trial.

12. Now coming to her allegation of demand after marriage, it is seen that her pleadings mention that after two months of marriage he demanded Rs 10,000/- and at times he demanded Rs 20,000/- and ultimately on 5-1-15 he demanded Rs 1,00,000/- . However during trial she stated that he started demanding Rs 1,00,000/- after two months of marriage and tortured her. Surprisingly the defence did not cross examine her on this point and as such this allegation of demand and torture remained un - rebutted during cross examination. It is also seen that she has made few allegations against her sister-in-law, brother-in-law during trial but these are beyond pleadings. She also alleged that the 2nd party had asked her to bring a mobile phone and to consume poison, but these facts are also beyond her pleadings. However, on an overall analysis of the evidence of PW1, I find that the element of demand and torture after marriage is certainly made out.

13. 1st party has alleged in her pleadings that the 2nd party beaten her on 5-1-15 for her refusal to fulfil his demand and asked her to call her mother and when her mother came she was handed over to her mother. Her mother and brother tried to solve the matter and stayed in her matrimonial home for two days but in vain. During trial she however stated that she was driven out and next day she called her mother who came with her brother and stayed with her. Then she was sent home with her mother on 8-1-15. Though there is some discrepancy as to under what circumstances she left the house, but it has become clear from her evidence that her mother and brother had come when she was seven months pregnant and stayed with her for two days and also tried to pacify the parties. It certainly shows that there were some issues between the parties before she left home. The 2nd party took the plea that the 1st party left for her home for delivery of the child but did not

return in spite of his best efforts. The evidence of DWs shows that he had tried to bring her back. But DW2 and DW3 have also testified that they have no idea as to what had happened between the parties. The 2nd party has stated that the 1st party insisted him to stay with her parents and he did not agree. The 1st party has denied to have made any such proposal.

14. Apparently, the relation between the parties is sour and they are not leading conjugal life at present. On over all analysis, I find that the evidence of PW1 does substantiate the fact that she left the matrimonial home under duress and has sound reasons for not staying in her matrimonial house. She has testified that the second party is not maintaining her at present. In fact, he has indirectly admitted that he is not paying her anything. So negligence on his part is proved.

15. The 1st party has claimed that the 2nd party has landed property, fishery and earns about Rs 30,000/- per month. The 2nd party took the plea that he is unemployed but admitted that he got 2 bighas of land in partition, has fishery and an RCC house. The 2nd party has not placed on record his actual income, he merely denied the suggestion that his earning capacity is as claimed by the 1st party. Even if it is presumed that he is unemployed but his evidence reveals that he does cultivation and has fishery. He is an able bodied man. He is ready to resume conjugal life with the 1st party, which means he is capable of maintaining her and his minor daughter. He has no other burden except his wife and daughter. So he cannot shirk off his responsibility by saying that he is unemployed and he cannot afford to maintain the 1st party. He has a bounden duty to maintain his legally wedded wife as well as his minor daughter who have no independent source of income and are now dependant on the poor mother of the 1st party. In fact DWs have testified the fact that the family of the 1st party is very poor. After going through all the above, the court has come to the conclusion that the 2nd party seems to be an able bodied person having sufficient source of income.

16. The hon'ble Supreme Court in the famous case of ***Chaturbhuji V. Sita Bai, (2008) 2 SCC 316*** held as below:

*“ The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain herself" in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in **Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors. (AIR 1978 SC 1807)** falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India, 1950 (in short the 'Constitution'). It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in **Savitaben Somabhai Bhatiya v. State of Gujarat and Ors. (2005 (2) Supreme 503).**”*

17. In **Bhagwan v. Kamla Devi (AIR 1975 SC 83)** it was observed that the wife should be in a position to maintain standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression "unable to maintain herself" does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 Cr.P.C.
18. Thus in view of the above discussions, I hold that the 1st party has proved her case. The 2nd party has neglected his wife and his minor daughter despite having sufficient means. As such 1st party is entitled to maintenance. Considering the present inflation in the economy and price

rise, I deem it fit to allow the prayer for maintenance of the 1st party and pass the following order.

ORDER

19. Judgment is delivered in the open court. The 2nd party is directed to pay Rs. 3000/- per month to the 1st party and Rs 1000/- to his minor daughter w.e.f the date of passing of this order. The case is disposed of on contest. Let a free copy of the judgment be supplied to the 1st party. Given under my hand and seal of the court on 11-5-16.

Delivered by

S. Handique
SDJM(S), Bongaigaon

APPENDIX

1ST PARTY EVIDENCE

PW1..SOMELA KHATUN
DOCUMENTS..NONE

2ND PARTY EVIDENCE

DW1.. IMDADUL ISLAM
DW2..MOKIBUL HUSSAIN
DW3..SHAJAHAN ALI
DOCUMENTS..NONE