

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
BONGAIGAON.

PRESENT: SYEDA FARIDA AFZAL ZINNAT, AJS

G.R CASE NO: 590/2014

STATE OF ASSAM VERSUS MD. HAMED ALI

U/S 498(A) IPC

FOR THE PROSECUTION: MR. R.C.MAHATO, ASST.P.P

FOR THE DEFENCE: MRS. R. AHMED, ADVOCATE

EVIDENCE RECORDED ON: 25/9/2014, 28/11/2014

ARGUMENTS HEARD ON: 28/11/2014

JUDGMENT DELIVERED ON: 11/12/2014

JUDGMENT

1. Prosecution case is that the husband and in laws of Msst. Esaton Nessa started to torture her physically and mentally after her marriage which was solemnized about three years ago. Unable to tolerate the tortures inflicted on her, Esaton Nessa took money from her father and gave to her in laws several times. Then again her husband tortured her physically at the instigation of his family members demanding Rs. 10,000/- and drove her out of the house. Finding no other way she took shelter at

her father's house but on 7/7/2014 at about 3.30 p.m. her husband came to her father's house and demanded Rs. 50,000/- from her and tried to hurt her with a dagger. Thereafter, Msst. Esaton Nessa w/o Md. Hamid Ali of Dakhin Chatipur lodged a written FIR with Dhaligaon P.S. The FIR was received at Dhaligaon P.S and Dhaligaon P.S Case No. 117/2014 was registered u/s 498 (A) IPC and investigation was carried on. During investigation a prima facie case U/S 498 (A) IPC was found to be well established against accused Hamid Ali and accordingly police submitted Charge Sheet U/S 498 (A) IPC against the accused Hamid Ali.

2. Cognizance was taken U/S 498 (A) IPC and the case was made over to my file for disposal. Upon appearance copies of the relevant documents were supplied to the accused person in compliance with section 207 Cr.P.C and charge U/S 498 (A) was framed against the accused person which was read over and explained to the accused person to whom he pleaded not guilty and claimed to be tried.
3. During trial the prosecution examined as many as seven witnesses. Accused was examined U/S 313 Cr.P.C. The defence plea is of total denial.
4. After hearing both sides I find that following is the point to be determined in this case:

Whether the accused person being the husband of the informant Msst. Esaton Nessa, subjected her to cruelty with a view to coerce her to meet his unlawful demand of dowry of Rs. 50,000/- and thereby committed an offence punishable U/S 498(A) IPC?

5. DISCUSSION ON EVIDENCE, DECISION AND REASONS THEREOF:
6. I have perused the evidences on record and heard arguments of learned counsels of both sides. In order to decide whether the evidences on record disclose of an offence punishable U/S 498 (A) IPC let us first discuss the offence U/S 498 (A) IPC, which reads as:
498A: 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;
 - (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 property or valuable security or on account of failure by her or any person related to her to meet such demand.
7. I would now like to discuss the evidence on record in order to determine whether the accused is liable to be held under section 498 (A) IPC.
8. PW1 Esaton Nessa stated that after four years of her marriage her husband, father-in-law and brother-in-law started to torture her demanding money. Her husband started assaulting her. That, on 15/5/2014 her husband

assaulted her in demand of money and drove her out of the house. She lodged an ejahar at Dhaligaon P.S but police made her compromise the case at police station. That, after about a month of this incident Hamid Ali took her back on 3/6/2014 and on 13/6/2014 he again assaulted her demanding of Rs. 20,000/-and drove her out of the house. That, she took shelter at her house and on 7/7/2014 Hamid Ali came to her mother's house and demanded Rs. 50,000/- showing a knife and said that if she does not give him money he will kill her and her family members. Finding no way out she lodged the ejahar which she exhibited as Exhibit1 and her signature as Exhibit 1(1).

9. In her cross examination PW1 further clarified that her husband's family members were present at the time of demanding money.
10. PW2 Msst. Rahima Khatun is the mother of PW1. She stated that after four years of marriage accused Hamid Ali started to assault Esaton demanding Rs. 20,000/- and that Esaton informed her about the demand of money and the tortures. According to PW2 her daughter Esaton took shelter at her house when she was driven out of her house and Hamid Ali came to her house and tortured her in demand of money.
11. To a question put to the PW2 during cross examination she answered that she was not present at the time when Hamid Ali assaulted her daughter in her matrimonial home.
12. PW3 Ofatun Nessa is the sister-in-law of the informant Esaton Nessa. According to her Hamid used to quarrel

with Esaton for money. She stated that her father-in-law i.e. the father of the informant gave money several times to Esaton. That, after that Hamid started torturing Esaton in demand of Rs. 50,000/- and unable to tolerate the tortures she came back and took shelter in her mother's house about four months back. That, Hamid came there and demanded Rs. 50,000/- and misbehaved with her father-in-law and he left when people gathered there.

13. During her cross examination PW3 confirmed that Esaton gave money to Hamid.
14. PW4 Ezazul Hoque stated that Esaton is from his village and that he has heard that after some time of her marriage, her husband Hamid started to torture and assault her. He even stated that whenever he visited Esaton's mother's house, Esaton used to tell that she has come to her mother's house because Hamid had assaulted her. PW4 also stated that about six months ago when Esaton came to her mother's house she told him that Hamid had assaulted her demanding of Rs. 50,000/-. PW4 also stated that once Hamid came to the house of the mother of Esaton and assaulted her there.
15. During cross examination PW4 confirmed that he has seen Hamid assaulting Esaton at her mother's house. He even confirmed that on the day on when Hamid assaulted Esaton at her mother's house Jalaluddin, Mozammil Hoque and Ofatun Nessa were present and that he did not notice the other people.

16. PW5 Jalaluddin Ahmed stated that his house is near the maternal home of Esaton Nessa. He stated that Hamid Ali demands money from Esaton quite often and the father of Esaton told him about this. That, Esaton asks money from her father and often Hamid comes and takes money from the father of Esaton. That, about 4/5 months ago Hamid came to the house of Esaton's mother and shouted there. That, villagers gathered and called the family members of Hamid who took Hamid away. That, on the next day Esaton went to her matrimonial home but after a few days again Hamid Ali assaulted her and drove her out of his house demanding money. When she came to her mother's house Hamid Ali came there and tried to hurt Esaton with a khukri (knife).
17. During his cross examination PW5 confirmed that he had heard and also seen Hamid Ali demanding money.
18. PW6 Anowar Islam stated in his evidence that about four months ago after returning home from work he has heard that Hamid Ali assaulted Esaton. He also stated that he came to know that Hamid Ali keeps demanding money and that day the quarrel took place for Rs. 50,000/-. Defence did not cross examine the witness.
19. PW7 Saizuddin Ali stated that he has heard from his wife that Hamid Ali drove Esaton away from his house after assaulting her because she did not fulfil his demand of Rs. 50,000/-.
20. Upon a bare perusal and appreciation of the evidence it becomes clear that the defence could not shake the

credibility of the witnesses. From the evidence of the PWs it has come to unfold that after about four years of the marriage the accused Hamid Ali started to torture and harass his wife Esaton Nessa demanding money. From the evidence of the PW3, PW4 and PW5 it has also become clear that the father of Esaton gave money to Hamid Ali several times and he kept demanding more. He harassed Esaton to such an extent that she had to take shelter at her father's house frequently and arrange money for her husband. The behaviour meted out to Esaton by her husband clearly falls under the purview of harassment as described in the explanation (b) to section 498-A IPC. Defence could not shake the credibility of the witnesses. Although the PWs may not have been present at the house of Hamid Ali at the times when he used to harass Esaton Nessa, but they have all witnessed the unfortunate situation of Esaton Nessa every time she took shelter at her father's house because of the harassment of her husband.

21. PWs corroborate each other. They are all witnesses to the harassment met out to the complainant by Hamid Ali. Their testimonies remained unrebutted. There are no infirmities and discrepancies in the evidence of the PWs and their testimonies are believable and trustworthy.
22. In the result it is held that the prosecution has proved the case beyond all reasonable doubt against the accused person Hamid Ali. The accused is held guilty of the offence U/S 498 A of the IPC and he is convicted accordingly.

23. Considering the nature of the offence and its impact both on society and in the lives of those affected by such offences and keeping in mind the object behind enacting section 498 A in the Indian Penal Code, I am not inclined to extend the benefit of section 360 Cr.P.C or sections 3 and 4 of the Probation of Offender's Act to the accused person.
24. Heard the accused on the point of sentence. The accused prayed for leniency. Considering all aspects and the facts and circumstances of the case I am of the considered opinion that the accused should be dealt with leniently. Hence I sentence the accused person to undergo R.I for three months and to pay a fine of Rs. 1000/- for the offence U/s 498 (A) IPC. In default of payment of fine the accused is to undergo imprisonment for a further period of one month. The period of detention undergone by the accused, if any, to be set off against the sentence of imprisonment as per provisions of section 428 Cr.P.C. The amount of fine, if realised is to be paid to the victim.

Order

The accused Hamid Ali is convicted u/s 498-A IPC and is sentenced to undergo R.I for three months and to pay a fine of Rs. 1000/- for the offence U/s 498 (A) IPC. In default of payment of fine the accused is to undergo imprisonment for a further period of one month. The period of detention undergone by the accused, if any, is to

be set off against the sentence of imprisonment as per provisions of section 428 Cr.P.C. The amount of fine, if realised is to be paid to the victim.

Furnish a free copy of the judgment to the convict.

Given under the hand and seal of this Court on this the 11th day of December, 2014.

Syeda Farida Afzal Zinnat
Judicial Magistrate (Class I)
Bongaigaon

Appendix:

List of witnesses:

1. PW1: Msst. Esaton Nessa
2. PW2: Msst. Rahima Khatun
3. PW3: Msst. Ofatun Nessa
4. PW4: Ezazul Hoque
5. PW5: Jalaluddin Ahmed
6. PW6: Anowar Islam
7. PW7: Saizuddin Ali

List of exhibits:

1. Exhibit 1: F.I.R
2. Exhibit 1(1): Signature of PW1