

IN THE COURT OF SUB-DIVISIONAL JUDICIAL  
MAGISTRATE, BONGAIGAON

PRESENT: S. HANDIQUE, AJS

**G.R . 516/14**  
**(u/s 498 (A) IPC)**

**State**  
**V.**  
**Aminur Islam**

For prosecution: Mr. Sameer.Kr. Nath

For defence: Mr. Arun. Kr. Deka

Evidence recorded on 20-11-14, 5-12-14

Accused examined u/s 313 Cr. P.C. on 19-12-14

Arguments heard on 22-12-14

Judgment delivered on 30-12-14

**JUDGMENT**

1. *The prosecution story in brief* : Msstt. Hafiza Khatun lodged a complaint before the Id. CJM, Bongaigaon on 29-5-14 against her husband Aminur Islam. She alleged that her husband started torturing her after some time of their marriage. According to her, the accused demanded Rs 50,000/- from her

and when she could not satisfy his demands, she was beaten up badly and ultimately driven out on 11-5-14. She further alleged that the accused threatened to leave her and to contract second marriage if his demands are not fulfilled. The complaint was forwarded to Bongaigaon P.S. for investigation. After investigation, the charge sheet was filed by the police u/s 498(A) IPC against accused Aminur Islam, husband of the complainant and the case was transferred to this court.

2. The accused appeared before the court and he was released on bail. He was served with necessary copies in due course of time. The formal charge was framed against him u/s 498 (A) IPC and it was read over and explained to him, to which the accused pleaded not guilty and claimed trial.
3. In due course of trial four witnesses were examined by the prosecution to prove the case against the accused. The accused was examined u/s 313 Cr. P.C which is of total denial. The accused did not adduce any defence evidence.
4. The following point for determination is framed in this case.

#### **POINT FOR DETERMINATION:**

1. *Whether the accused subjected the complainant to cruelty after marriage by making unlawful demands for dowry and when the complainant could not satisfy his demands, whether the accused beat her up and drove her out and thereby committed an offence punishable u/s 498 (A) IPC?*

#### **DISCUSSIONS, DECISIONS AND REASONS THEREOF:**

5. The prosecution first examined complainant Marjina Begum as PW1. She deposed that she got married to the accused four years ago and they have two children out of their wedlock. According to her, their conjugal life went off well for about one year. But thereafter her husband started torturing her. She alleged that the accused demanded cash Rs 50,000/- and other articles from her and when she told him that her parents cannot satisfy his demands then the accused used to beat her up. She however kept on enduring all his tortures. She stated that a village bichar was held but the accused did not abide by it. The village elders advised her to take recourse to the law in case he

does not abide by the decision. The accused however did not relent in his tortures and beat her up demanding money and ultimately drove her out of the matrimonial house seven months ago.

6. During cross examination the complainant categorically denied all the defence suggestions. The defence tried to suggest that she left home as she was having an extramarital affair with someone, but she denied it. The accused did not lead any evidence to prove the alleged extramarital affair of the complainant. She could not say the date on which she was driven off. She denied that the case has been filed due to the ill advice of the village elders. She also denied that the case was lodged belatedly as she was consulting the village elders (Dewani).
7. **PW2 Abdul Aziz** is the father of the complainant. He deposed that after about one year of the marriage, the accused started torturing his daughter. He stated that Marjina told him that Aminur had demanded Rs 50,000/- and he agreed to pay Rs 10,000/- but the accused did not agree to it. He also stated that the accused did not abide by the decision taken in the village bichar. He alleged that the accused assaulted Marjina and drove her out six months ago. During cross examination he denied that his daughter was having an affair with someone, so she left the matrimonial home willingly. He testified that after the village bichar both Marjina and the accused resumed their conjugal life but the accused again started torturing her. He denied that the accused did not demand anything from them or that he had come to take her back but he was assaulted and chased off.
8. **PW3 Abul Hussain** deposed that Marjina had told him that the accused used to assault her and also demanded money. He stated that he had seen Aminur assaulting Marjina. According to him, he had intervened and a settlement was arrived at between the parties. However, Marjina came back to her parents' house after sometime. He heard that she is taking shelter in her parents' house as the accused tortured her. During cross examination he deposed that he is a neighbour of Marjina's parents. He denied the defence suggestion that the accused did not torture Marjina or that she left the matrimonial home on her own. He denied that Marjina was having any illicit relationship. He also denied that he had not witnessed the assault on the complainant. He admitted that he did not disclose to the police that he had seen the accused assaulting Marjina. He also

admitted that he did not state before the police the exact amount demanded by the accused.

9. **PW4 Md. Ali** is known to both the parties and he is also a co-villager. He stated that Aminur used to physically torture Marjina for which she came back to her parents' house. He had witnessed it but he did not know the reason for their quarrel. He denied during cross examination that the accused did not assault Marjina. He showed his ignorance if Marjina was having any affair with someone. But he testified that they used to quarrel.
10. The accused stated during his examination u/s 313 Cr. P.C. that on that particular date Marjina had quarrelled with him and threatened to cut his male organ. According to him, they did not interact with each other that night and next morning she left the house without informing him. He denied that he demanded dowry from her. According to him, Marjina used to visit her parents whenever they had any quarrel. His explanation cannot be discarded as a mere tool of defence.
11. The defence though tried to prove that the complainant was having an illicit affair, but failed to prove it. Rather it is seen from his examination u/s 313 Cr. P.C. that they had quarrelled before she left the matrimonial home.
12. The Id. Counsel for the accused argued that the allegations made against the accused are vague in nature. It was also argued that the evidence of independent witnesses is not beyond suspicion. It is further argued that PW2 is a related witness and his evidence cannot be relied upon.
13. I have perused the evidence of PWs carefully in the light of the arguments put forth by the defence side too. In matrimonial cases, very often the witnesses are close relatives as matrimonial disputes arise within the four walls of the house and accordingly the direct and probable witnesses are only related witnesses. A related witness is not necessarily an interested witness. The Hon'ble Supreme Court in the case of ***Kartik Malhar V. State of Bihar, (1996) 1 SCC 614***, has held that a close witness who is a natural witness cannot be regarded as an interested witness. The term 'interested' postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some animus or for some other reason.
14. Thus it is quite natural that the present informant would have disclosed the alleged facts of demand and torture to her father (PW2). But that does not make him an interested witness and his evidence cannot be brushed aside.

15. Now moving further, I find that there were some issues between the parties for which village bichar was held earlier and they resumed conjugal life afresh. But again some dispute arose between them which forced her to live with her parents. PW1, PW2, PW3 all the three witnesses deposed that the accused had demanded money and he used to torture her as his demands remained unfulfilled. PW4 also witnessed the accused assaulting PW1, but he does not know why. He however testified that the parties used to quarrel. PW1 has stated that the accused demanded Rs 50,000/- from her parents and when she refused owing to the financial condition of her parents, she was tortured. Her father (PW2) added further that he offered to pay Rs 10,000/- to the accused to which the accused did not agree. But PW1 herself does not say that her father had offered him Rs 10,000/- In fact PW2 stated that he had offered that amount so that the accused could start some business. So it cannot be presumed that the alleged demand was in the nature of dowry demand. The defence tried to suggest that he did not disclose it to the police that the accused did not demand Rs 50,000/- or that he offered to pay Rs 10,000/- The investigating officer has not been examined in this case to prove this contradiction. However, I do not consider it vital. It is but natural that the complainant would disclose it to her parents if the accused demanded money and tortured her. PW3 stated that he helped them to arrive at a settlement. But afterwards PW1 came back to her parents. Though PW1, PW2, PW3 are talking about the demand of money but it is to be seen whether their testimony fall in one line so as to make it a case of unlawful demand associated with dowry. In fact PW2 stated that he offered to pay Rs 10,000/- for business purpose to the accused. If that be the case, the said demand and offer take it out of the purview of unlawful demand.

16. In this case PW3 and PW4 are independent witnesses and are known to both the parties. PW3 is a neighbour of PW2. PW3 has testified that he did not disclose it to police when was the demand made and the exact amount demanded. PW4 has seen them quarrelling but he does not know why. Let me go through the relevant provision of law to appreciate the above evidence.

17. **Section 498 (A) IPC provides:**

*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 to meet such demand.*

18. The term cruelty as qualified by Section 498A IPC postulates a treatment as to cause reasonable apprehension in the mind of the wife that her living with the husband will be harmful and injurious to her life. In this regard, the relationship between the parties, their cultural status, temperament, state of health, their interaction in daily life, are all relevant factors. In the present case the complainant and her father simply stated that the accused demanded money and beat her up. The alleged torture started after about one year of their marriage. They got married four years ago and meanwhile two children are born to them. It is indicative of the fact that they led conjugal life for more than three years. In between there were attempts to settle the dispute between them. The complainant herself stated that she waited for one month before filing the case. In her FIR she mentioned that she was awaiting compromise, so the case was filed after one month. It is hard to believe that the complainant was tortured for such a long period and her life with the accused was so miserable that they cohabited for more than three years and begotten two children during that period. As disclosed from her complaint petition/ FIR she has two children, one is aged 1 ½ years and the younger one is 2 months old. If she was awaiting compromise then it is quite clear that she was not contemplating any injury to her life, limb or health by cohabitating with the accused. Furthermore, the mere statement of the complainant and other witnesses that the accused demanded money and tortured her without qualifying the degree or intensity of such cruelty on the part of the accused is such, as is likely to cause grave injury or danger to her life or limb or to her mental and

physical health does not constitute cruelty u/s 498 (A) IPC. The complainant has not stated that she had to undergo any treatment ever for the physical torture, though proof of actual physical torture is not always necessary. She could not say the particular dates on which she was tortured and ultimately driven out. It may be due to the fact that she is an illiterate woman and she is not expected to give particular details of each and every torture. But that consideration alone cannot go against the accused. In fact PW3 and PW4 merely stated that they saw the accused assaulting her without disclosing the date and time. They are not even next door neighbours, so it cannot be presumed that they had witnessed every incident of torture during the last three/ four years of their matrimonial life,. Moreover, PW1 has not disclosed that PW3 and PW4 witnessed any such incident.

19. The hon'ble Gauhati High Court in ***JITENDRA SHOME. VS STATE OF TRIPURA., 2012 (3) GLT 879*** held in para 20 as regards omnibus statements of demand and harassment as follows:

*“PROSECUTION case, as alleged, may come under the purview of explanation (b) but the ingredient thereof is missing in the evidence on record. The omnibus statement of the witnesses can in no way be said to be convincing evidence to hold that the deceased was subjected to harassment with a view to coerce her to fulfill the unlawful demand of Rs. 20,000/-. A mere statement that the deceased was subjected to cruelty on demand of money does not constitute an offence under Section 498-A of IPC. If such a demand was actually made, it is further necessary to prove that the degree or intensity of such cruelty on the part of the accused is such, as is likely to cause grave injury or danger to her life or limb or to her mental and physical health. If the deceased was subjected to cruelty by the accused or any member of her matrimonial home during five years of her matrimonial life, she would naturally express her plight to her neighbours, relatives and other people in the society. In the case at hand, except the mother, brother, uncle and cousin brother of the deceased, there is no other item of evidence to support the allegation of cruelty. Under such circumstances, the prosecution case that the deceased was subjected to cruelty by the*

*accused in the matrimonial home on demand of Rs. 20,000/-, seems to be extremely doubtful and based on such fractured evidence it was not be proper to hold the accused guilty of the offence charged against him.”*

20. The hon'ble High Court again reiterated its stand to guard against mere omnibus statements while dealing with cases u/s 498 (A) IPC in the case of ***DULAL DEBNATH VS STATE OF TRIPURA, 2012 (5) GLT 52.***

21. In the light of the above discussions, it is found that all the ingredients of cruelty as defined u/s 498 (A) IPC are not proved in this case. Therefore, I hold that the prosecution has not established the case against the accused beyond reasonable doubt.

### **ORDER**

22. In view of the above discussions, I hold the accused not guilty u/s 498 (A) IPC and he is acquitted. Accused is set at liberty forthwith. Bail bond stands discharged as per law. Given under the hand and seal of the court on 30-12-14.

S. Handique, AJS  
SDJM(S), Bongaigaon.

## **ANNEXURES**

### **PROSECUTION WITNESSES**

PW1..MARJINA BEGUM

PW2..ABDUL AZIZ

PW3..ABDUL HUSSAIN

PW4..MD. ALI

NO DOCUMENTS EXHIBITED.