

**BEFORE THE JUVENILE JUSTICE BOARD, BONGAIGAON**

**Present:** Mrs. S. Handique, AJS

Principal Magistrate, JJB, Bongaigaon

Mr. D. C. Basak,

Member, JJB, Bongaigaon

Mrs. R. Choudhury,

Member, JJB, Bongaigaon.

**JJB Case no. 49/14**

**(u/s 498 (A) IPC)**

**State**

**V.**

**Md. Rafiqul Islam**

Evidence recorded on: 1-7-14, 4-9-14

Juvenile examined u/s 313 Cr. P.C. on: 9-9-14

Arguments heard on: 9-9-14

Judgment delivered on: 16-9-14

For prosecution: Mr. T.K. Bhowmik, APP

For defence: Mr. G. Biswas, Advocate

**JUDGMENT**

1. The prosecution story of this case before the JJB is that informant Msstt. Jamila Khatun lodged an FIR on 21-5-11 against Rafiqul Islam, Haowa Khatun and Sukur Ali stating inter-alia that Rafiqul Islam is her husband with whom her marriage was solemnised 11 months ago. She alleged that her father had given Rs 20,000/- and gold jewellery worth Rs 18,000/- to her

husband at the time of their marriage. But her husband used to torture her demanding cash and dowry in connivance with the other accused. She further alleged that on 10-5-11 at 9 P.M the accused demanded dowry from her and dragged her by hair and punched her. It is also alleged that accused Sukur Ali hit her on her head with a dao, as a result she sustained blood oozing cut injury on her head. She stated that the accused again assaulted her at 3 P.M that day and threw her out of the house. As she was in injured condition, her brother, mother and uncle, aunt took her to Rangapani Hospital in a pushing cart from where she was referred to Abhayapuri Hospital. She explained that the FIR was lodged belatedly as she was undergoing treatment.

2. The FIR was registered as Mererchar P.S. Case no. 22/11 u/s 498 (A) IPC and after investigation the police filed the charge sheet against Rafiqul Islam. Meanwhile accused Rafiqul Islam was arrested during investigation stage and remanded to hajat. After filing of the charge sheet the Id. SDJM, North Salmara took cognizance of the offence u/s 498 (A) IPC and necessary copies were served upon him and he was released on bail. The Id. SDJM, North Salmara framed charge u/s 498 (A) IPC against Rafiqul Islam, same on being read over and explained to him, he pleaded not guilty and claimed trial. However, Rafiqul Islam was later on declared to be a juvenile by the Id. SDJM, North Salmara and the case was forwarded to this Board.
3. After receiving the case record the Board summoned Rafiqul Islam, the juvenile in conflict with law ( herein after referred to as JCWL). The particulars of offence u/s 498 (A) IPC were explained to him to which he pleaded not guilty and claimed trial.
4. During enquiry five witnesses were examined by the prosecution including the investigating officer. JCWL Rafiqul Islam was examined u/s 313 Cr. P.C wherein he denied the incriminating materials put to him and also declined to adduce defence evidence. Heard arguments from both the sides.
5. The following points for determination have been framed in this case:

#### **POINTS FOR DETERMINATION:**

1. *Whether JCWL Rafiqul Islam subjected his wife Jamila Khatun to cruelty in order to coerce her to fulfil your illegal demand for dowry and thereby he committed an offence punishable u/s 498 (A) IPC?*

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

##### **DECISION ON POINT NO. 1:**

6. The allegation against the JCWL is that he tortured the informant to extract dowry and drove her out of the matrimonial home. Let us examine the evidence on record. *PWI Rustam Ali* is a neighbour who is known to both

the informant and the juvenile. He testified that the informant is related to him. He stated that the marriage between the informant and the juvenile was solemnised through execution of Kabinnama. He does not know as to why the parties quarrelled. During cross examination PW1 testified that the informant used to love the juvenile and he was forced to sign the Kabinnama. He testified that the parties never lived as husband and wife. He stated that that the father of the juvenile has lodged a case against the father and mother of the informant for compelling the juvenile to sign the Kabinnama.

7. **PW2 Soneka Bibi** deposed that the juvenile married the informant as per Shariat through execution of Kabinnama. She stated that the informant and the juvenile started their conjugal life thereafter. She stated that the juvenile asked her to bring Rs 20,000/- from her parents. When the informant informed the matter to her parents including her, they showed their inability to pay the amount. She stated that the juvenile started torturing the informant thereafter. She further stated that the juvenile was taking the informant to the court forcibly one day. According to her, she saw the juvenile when he was taking the informant with him and shouting at her. She stated that as she went forward, the informant hugged her. She further alleged that the juvenile snatched the informant from her and started assaulting the victim. According to her, the juvenile tore off the dress of the informant, so she gave her own clothes and took the informant to her home. She stated that she then took the informant to the hospital and thereafter her parents arrived. During cross examination she denied her knowledge as to the date of execution of the Kabinanama and the date on which the informant was assaulted. Further she could not say on which dates the juvenile demanded the amount. She testified that the father of the juvenile has filed a case against the parents of the informant. She also testified that the informant is older than the juvenile. She however denied that the juvenile was compelled to sign the Kabinnama and that he never tortured the informant.
8. **PW3 Jamila Khatun** is the informant. She stated that she got married to the juvenile 3 ½ years ago through execution of Kabinnama. She stated that she started her conjugal life at the house of the juvenile but he demanded Rs 20,000/- from her parents after 5 months of their marriage. She alleged that the informant received Rs 20,000/- from her father at the time of marriage but he again demanded Rs 20,000 from her after marriage. She alleged that one day the informant left her in injured condition on the road after assaulting her and her aunt took her to Abhayapuri Hospital. She stated that she spent one night in the hospital and thereafter filed the case. She admitted that the father of the juvenile has lodged a case against her parents for executing the Kabinnama forcefully. She stated that she lodged the case next day after she was discharged from the hospital. She denied that the juvenile did not make any demand or that he did not torture her.
9. **PW4 Falani Bewa** is the mother of the victim. She stated that her daughter got married to the juvenile 4 years ago. According to her, the juvenile started torturing her daughter after five months of their marriage demanding cash of

Rs 20,000/-. She alleged that the juvenile assaulted her daughter on the way while he was taking her to the Abhayapuri court and left her half naked on the road. She stated that Soneka Bibi covered her daughter with clothes and took her to the hospital where she was kept over night. During cross examination she could not say on which date her daughter got married or on which date the juvenile demanded money and left her on the road. She could not say on which date her daughter was taken to the hospital. She admitted that the father of the juvenile has lodged a case against them alleging forcible execution of Kabinnama.

10. **PW5 Darbesh Ali** is the I/O. He exhibited the charge sheet as Ext. 1. He testified that witness Rustam Ali is one of the boundary men. He confirmed that witness Soneka Bibi did not state before him that the juvenile demanded Rs 20,000/- from the mother of the informant and that she gave her own clothes to the informant. He further confirmed that witness Jamila Khatun did not tell him that the juvenile demanded Rs 20,000/- after marriage.
11. If we carefully peruse the evidence of PWs it is crystal clear that a case has been going on between the parties regarding the manner of execution of the Kabinnama through which the marriage between the parties is claimed to have taken place. The juvenile during his examination u/s 313 Cr. P.C stated that the father of the informant took his signatures on the Kabinnama forcibly for which his father has lodged a case against the father of the informant. He stated that he never led conjugal life with the complainant even for one day. He denied to have tortured her. In this regard the evidence of PW1 is noteworthy. He is a neighbour cum boundary man of the juvenile. He testified that the parties never led any conjugal life. We have compared the testimony of PW 2, PW3 with their earlier statements made before the police. The victim/ PW3 stated u/s 161 Cr. P.C that on 10-5-11 in the morning juvenile Rafiqul assaulted her and caused injury on her head. Thereafter her parents, uncle and aunt took her home while she was on the way to Abhayapuri with Sukur Ali, Rafiqul and Howa Khatun. Thus it appears the victim has deviated from her earlier version and has exaggerated the facts. She deposed during trial that the juvenile left her in injured condition and her aunt Soneka Bibi saved her. Her testimony does not inspire confidence. Further PW2 had stated before the police that on 10-5-11 the juvenile and his parents were taking the complainant with them to Abhayapuri Court for giving her Talaque but somehow they were stopped. She further stated before police that the informant was assaulted and thereafter they dropped her at her parents' home. During trial it appears she has also exaggerated facts and introduced new facts such as, tearing off clothes, taking the victim to hospital etc. Further, PW2, PW3, PW4 have contradicted each other. PW2, PW4 stated that the juvenile left the victim half naked on the road, but PW3 herself has not stated as such. Neither these facts were stated in the FIR or before the police. None of the witnesses could say on which date the Kabinnama was executed and she was assaulted. Further PW2 never stated that PW3 was kept in the hospital overnight whereas PW3 and PW4 stated that she was kept in the hospital over night.

There is nothing on record that the victim was admitted in the hospital and she was kept over night. Thus the testimony of PW 2, PW3, PW4 do not inspire confidence.

12. From the above discussion, it transpires that the prosecution could not establish two vital points, firstly, that the victim led conjugal life with the accused, secondly, the juvenile tortured her for dowry. The allegation brought against the juvenile are not proved beyond reasonable doubt. Hence we deem it fit to acquit the juvenile of the allegations. He is set at liberty forthwith. His bail bond stands cancelled. Given under the hand and seal of the Juvenile Justice Board, Bongaigaon on 16-9-14.