

**IN THE COURT OF THE CHIEF JUDICIAL
MAGISTRATE, BONGAIGAON**

GR.No: 525/11

STATE

Vs

Sri Mrinal Ray Choudhury

....Accused

Charged u/s: 498-A I.P.C.

Present: Smti M.De

C.J.M.Bongaigaon

Counsel for prosecution : Sri T.Bhowmick

.....A.P.P

Counsel for defence : Smti J.R.Barman

.....Advocate

Date of recording evidence:

18.1.13, 19.3.13, 6.5.13, 31.5.13, 24.2.14, 25.3.14, 21.7.14

Date of argument : 25.11.14

Date of judgment : 9.12.14

JUDGMENT

- 1) The case of the prosecution as unfolded in the case be briefly mentioned as below:

The complainant lodged a FIR on the 12.8.11 stating that his sister was married to the accused on 8.3.2009 and after six months of their marriage, the accused demanded Rs1,00,000(one lakh) from her and were subjecting her to physical and mental harassment since long and on non-fulfilment of the demand sent her away to her parents house on 11.12.2009 and thereafter on 10.8.2011 the accused sent his villagers to his father-in-law's house and asked the complainant to send back his wife to his house and when the next day she was taken to the house of the accused by her parents then the accused restrained the parents of the complainant and the wife and misbehaved with them. Based on this First Information Report, police registered a case, against the present accused person.

- 2) On completion of investigation, police laid charge-sheet against the accused persons.
- 3) During trial, charge u/s 498A IPC were framed against the accused person by my Id.predecessor and same was read over and explained to the accused person . As the accused

pleaded not guilty to the charges so framed against him, the trial proceeded.

- 4) In support of their case, the prosecution examined as many as 10 witnesses including the I/O. The accused was, then, examined under Section 313 Cr. P. C. In his examination aforementioned, the accused denied that he had committed the offence alleged to have been committed by him and though he did not adduce any evidence in his defence he had cross examined the PWs extensively. Argument of both sides heard.

5) POINTS FOR DETERMINATION :

- 6) Whether the accused being the husband of the complainant's sister had committed cruelty against her as alleged u/s 498A I.P.C.?

7) DECISION AND REASONS FOR THE DECISION:

- 8) To prove the guilt of the accused to the hilt, the prosecution examined as many as 10 PWs including the I/O. I have meticulously gone through the entire evidence on record wherein PW1 is Sri Prabir Ray Choudhury, that is the complainant, PW2 is Smti Bornita Ray Choudhury

that is the victim wife, PW3 is Sri Prasadu Ray Choudhury the father of the complainant, PW4 is the mother of the complainant Smti Pratima Ray Choudhury, PW5 is the paternal uncle of the complainant Sri Praneswar Ray Choudhury, PW6 is a witness Sri Chiran Medhi, PW7 is one Sri Karin Chandra Choudhury, PW8 is Sri Dharani Medhi, PW9 is one Smti Janami Medhi, and PW10 is a formal witness that is the I/O S. Hemanta Baruah.

9) In support of his case the accused only cross examined the witnesses extensively to rebut the charge levelled against him to prove his innocence.

10) PW1 is the complainant Sri Prabir Ray Choudhury deposed that his sister that is the victim was married to the accused on 8.3.2009 and that she had a peaceful conjugal life for a period of six months. Thereafter the accused demanded Rs one lakh from his sister and thereafter started to torture her and as they were unable to pay up the demand made by the accused so on 11.12.2009 the accused assaulted her and drove her away. Thereafter she stayed with the complainant and her parents for one and half years. Thereafter, on 10.8.2011 the accused along with some relatives went to the complainant's house to compromise the matter and when on the next day the

complainant's parents with the victim sister went to the house of the accused to keep the victim there then the accused came out in a drunken state and demanded the money and stated to them that if they fulfill their demand then he would keep the victim otherwise not. Thereafter, he confined the victim in a room and assaulted her and threatened her and thereafter the complainant being informed he filed the ejahar and with the help of the police he rescued the victim sister and his parents. Ext 1 is the ejahar and Ext 1(1) was his signature.

11) In his cross examination he stated that after his sister that is the victim was driven out of the house of the accused on 11.11.2009 then they had not filed any ejahar with the police or filed any complaint with the Court. He stated that as he had not gone to the house of the accused to keep his sister so he had not seen as to what had happened there and that he had filed the case on the basis of information given to him by his parents. He stated that he does not remember the date on which his parents rang him up and that he had only heard about the demand made by the accused. It was suggested to him that he had filed a false ejahar which he denied.

12) PW2 is the victim of this instant case Smti Bornita Ray Choudhury who stated that she was married to the

accused on 8.3.2008 and after six months of peaceful married life the accused asked her to pressurize her parents to give landed property in his name and thereafter assaulted her. Thereafter when she went to her father's house and placed the demand before them then they expressed their inability to meet up the said demand. Then they advised her to explain to the accused their inability. She further stated that she somehow continued her marital life with the accused till 8.3.2010. She further stated that on the night of her marriage anniversary the accused assaulted her and sent her away to her parents place. Thereafter she went to the place of work of the accused and intimated the higher officials and expressed in writing her desire to stay at the place of work of the accused. Thereafter the accused came to her parents house to take her back. She along with her parents went to the house of the accused on 11.8.2011 so that she may proceed to the workplace of the accused then the accused used expletives against her and confined her and her parents in his house and after two days they were rescued by the police.

- 13) In her cross examination it was suggested to her that she had stated to the police that she was married to the accused on 8.3.2011 which she denied. She stated that as the house of her in laws was an interior village and she

was kept by the accused there as he was serving in the army in Arunachal Pradesh border and as she was suffering from some woman related problems she had informed the accused to take her to his place of work and he had informed her that when he would be allotted with a quarter then only he could take her. Thereafter she with the consent of her husband's parents went to stay at her father's house and sometimes would visit her parents in law. Thereafter in the year 2011 the accused informed her that he was allotted a quarter and that he would come and take her. Likewise on 10.8.2011 the accused came to her father's place to take her but she did not go with him. On 11.8.2011 she along with her parents and her father's elder brother went to the house of the accused and after reaching there they had their meal and then her father's elder brother returned back and she and her parents stayed back. That night she was informed by her parents that they would not let her go all alone with her husband that is the accused to Arunachal Pradesh and that they would also go along with her. She had that stated she did not remember the dates on which the accused demanded the money and thereafter assaulted her. She stated that she received injuries but she did not remember the date on which she was assaulted. She stated that she did not state the fact of being assaulted by the accused to the neighbours of her in

laws place as well as the neighbours of her father's place. It was suggested to her that the accused never demanded money from her or assaulted her which she denied.

- 14) PW3 Sri Prasadu Ray Choudhury deposed that the victim was his daughter and that she was married to the accused on 8.3.2009 and after six months of peaceful married life the accused demanded one lakh rupees and landed properties and a motorbike and thereafter started to torture his daughter PW2. He stated that on 20.2.10 PW2 rang him up and stated that the accused had assaulted her and as such he that is the father is to come and take her away. Thereafter he along with his wife and his younger brother went to the house of the accused but did not get the accused there and explained to the PW2 in the presence of the parents of the accused and then they came back. Thereafter on 8.3.10 the accused rang him up to say that they are to take PW2 to their house. Thus he went to the house of the accused in the evening and stayed in the house of the accused at night and the next day brought the PW2 with him to his house. Then on 24.6.10 the accused rang up PW2 to go to his house but he did not allow her to go and informed the father of the accused to come and take her with them. Thereafter on 10.8.11 the relatives of the accused came and they held a discussion and the next day he and his wife and his brother went to the house of the

accused. When they went there then the accused came and used foul language against them. That night they stayed in the house of the accused and the next day again the accused misbehaved with them and thereafter he informed his son and thereafter the police came and rescued them.

15) In his cross examination he stated that the marriage between the parties was an arranged one. He also stated that the accused had not asked the amount of rupees one lakh from him and he also stated that he does not remember the date on which the accused demanded the money and the landed properties. He stated that on 20.6.2010 the accused had assaulted his daughter PW2. He also stated that he had not lodged any complaint with the police or informed the villagers of the accused's village. He stated that when the accused stayed in Arunachal Pradesh then the PW2 that is the victim stayed with her in laws in their village. He stated that on 11.8.2011 when he went to the house of the accused then he was provided with the sufficient hospitality by the accused household. He stated that the complaint was filed by his son as to what he that is PW3 had stated to him that is PW1. It was suggested to him that he had not stated to the police that the accused had demanded the one lakh of rupees and the land as well as the bike which he denied.

16) PW4 SmtiPratima Ray Choudhury had also stated in the same manner as PW3 that after six months of peaceful married life the accused tortured her daughter PW2 to give one lakh of rupees and landed properties to him and as they were unable to provide the same the accused tortured the PW2 and the same was informed to her by the PW2. She further stated that when the accused came home in the month of February 2010 then they went to the house of the accused when the accused informed her that he would divorce the PW2. Then the next day PW2 informed her that the accused had tortured her and then she talked over the matter with the parents of the accused. Thereafter on 9.3.2010 on the advise of the accused they brought the PW2 to their house. Thereafter on 10.8.2011 people from the accused's house came to theirs and as per the talks with them they took the PW2 with them to the house of the accused the next day. A little later the accused came and created a chaotic situation and tried to assault them. She further stated that that night they stayed in the house of the accused. The next day the accused again used expletives against them and tried to assault them and then they informed their son that is PW1 who came with the police and rescued them along with PW2.

17) In her cross examination she had stated that at the time of marriage the accused was posted in Arunachal

Pradesh and that the accused had informed them that he did not get any quarter to take his wife to stay there. She further stated that at the time of marriage the accused had not demanded anything from them. She stated that she does not remember the dates on which the accused had demanded the bike and the money. She further stated that the accused had not directly demanded the money from them but PW2 had stated to her that the accused had demanded the money from them. She stated that she does not remember the date on which PW2 had stated to her about the accused's demand.

18) It was suggested to her that she had not stated to the police that the accused had demanded the one lakh amount of money or the landed properties, that on 9.3.2010 they had brought the PW2 in the house on the advice of the accused, that on February 2010 they brought the PW2 to their house due to the torture committed on the PW2, which she denied. She stated that on 10.8.2011 the accused along with his family members came to their house to take the PW2 and they had cordial talks with them. She also stated that when they went to the house of the accused then they were also provided with food. It was suggested to her that as they wanted to go to the quarters of the accused with the PW2 and as the accused asked them not to go then they started a quarrel with the accused

which she denied. She also stated that on the basis of the information provided by them the PW1 their son had lodged the ejahar.

19) PW5 Sri Praneswar Ray Choudhury deposed that for one year the PW2 and the accused led a peaceful marital life. But thereafter the accused started to demand the bike, landed properties and cash from the PW2 and thereafter sent the victim to her father's house. While the PW2 was staying in the house of the PW3 then the accused along with his co-villagers went to the house of the PW3 and as per the meeting that was held it was decided that the accused would take her back. Hence the next day he along with the PW2's parents and the PW2 went to the house of the accused. Thereafter the accused appeared and was in an intoxicated condition and started to verbally abuse them and thereafter he returned back. Thereafter at night the PW3 had rung him that they were not in a position to come back and asked him to rescue them from the house of the accused. The next day with the help of the police they rescued them.

20) In his cross examination he had stated that he does not remember the date on which the accused came to take the PW2. He also does not remember the date on which they went to keep the PW2 in the house of the accused. He stated that he does not know as to what had happened after

he came back from the house of the accused. He admitted the fact that he had stated to the police that as the house of the accused was far away from his house he did not know what went wrong in the house of the accused. He also admitted the fact that he had not stated to the police that because of land, money and motorbike the accused had harassed the PW2. Certain suggestions were put to him that he had not stated to the police that the accused in an intoxicated manner misbehaved with them and that he had taken the help of the police to rescue the PW3 and the others from the hands of the accused.

- 21) PW6 Sri Chiran Medhi has deposed that he knew the couple well as he stays near the house of the accused and that actually she went to her parents house as a guest for a few days but did not return back.
- 22) In her cross examination he had stated that the PW2 used to stay most of the time in her parents house.
- 23) PW7 Sri Karin Choudhury stated that he heard that the couple used to have quarrels but he did not see anything.
- 24) In his cross examination he had stated that the accused used to work in the defence and as such most of the time he used to stay in his workplace and the PW2 used to stay most of the time at her parents house.

- 25) PW8 and PW9 stated that they did not know about any trouble that had erupted in the house of the accused.
- 26) Last but not the least is the evidence of the I/O Sri HemantaBaruahwho had deposed that on receipt of the FIR he inspected the place of occurrence and thereafter the statement of the witnesses were recorded and had brought the PW2 to the Court for recording her statement u/s 164 Cr.P.C and as the accused went on anticipatory bail he was given on police bail and on completion of investigation the next I/O had laid chargesheet against the accused.
- 27) In his cross examination he had stated that when the O/C had received the ejahar then he was not present in the police station and after being endorsed with the investigation of the case he opened the case diary.He stated that on the same day he went to the place of occurrence and took the statements of the witnesses but did not find the victim or her parents there.He further stated that he recorded the statements of the victim and her parents in the police station and he stated that PW2 had stated to him that she was married to the accused.He stated that the PW3 did not state to him that the accused had demanded the money or the bike or the landed properties from him.He stated that PW4 never stated to him that on

February 2010 they brought the PW2 to their house on being tortured by the accused.

28) Hence the prosecution case is that PW2 was the married wife of the accused as is evident from the evidence adduced by the PWs and the I/O and that after six months of the marriage as per the PW2 and one year as per the other PWs the accused placed a demand of one lakh in cash and a motorcycle and landed properties which she could not fulfill and as such she was driven out of the house of the accused and thereafter she had filed this case against the accused.

Let us see how far the prosecution has been able to prove the fact that the accused subjected the PW1 to cruelty on demand of cash money and the motorcycle and landed properties since after marriage with the accused.

29) Before analyzing the evidence on record it becomes necessary to go through the section 498A IPC which is worded as thus :

2) 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 also be liable to fine.

1) Explanation-For the purpose of this section, "cruelty" means-

- i. 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
 - ii. 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.
- 2) It is plain that as per clause (b) of the explanation, every harassment does not amount to cruelty within the meaning of section 498A IPC. The definition stipulates that the harassment has to be with a definite object of coercing the woman or any person related to her to meet an unlawful demand. In other words for the purpose of the section 498A IPC harassment simpliciter is not cruelty and it is only when the harassment is committed for the purpose of coercing a woman or any other person related to her to meet an unlawful demand for property etc that it amounts to cruelty punishable u/s 498A IPC.
- 3) Ld. defence counsel argued that prosecution miserably failed to prove the charge u/s 498A IPC as there is no direct evidence establishing the charge of cruelty within the meaning of section 498A IPC. The mere incidence of the PW1 filing a case against the accused person would

not automatically give scope for presumption that the accused has committed cruelty upon PW2. Evidence on record reveals that none of the PWs are direct evidences regarding the demand of money and motorcycle by the accused.

30) Travelling through the evidences on record it appears that it was PW2 to whom the demand landed properties was placed by the accused. It may be mentioned herein as per the evidence of the I/O that none of the other witnesses have stated that the accused had done so in their presence.

31) Except for the oral evidence of PW2 regarding the demand of cash money and the motorcycle and landed properties there is no other evidence on record. A bare perusal of the statements of the PWs makes it abundantly clear that the allegations of cruelty on demand of cash money and the motorcycle are general allegations and there is nothing specific as to the date, time etc. An omnibus statement has been made regarding the demand and harassment having no particulars at all. In absence of any particulars it is very difficult to depend on such omnibus statement of the witnesses regarding alleged demand and consequent torture for non-fulfillment of demand.

32) In the case of *Jitendra Shome – Vs – State of Tripura* 2012(4) G L J 421 it has been observed that “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 u/s 498A 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 such, as is likely to cause grave injury or danger to her life or limb or to her mental and physical health." Hence under such circumstances the prosecution case seems to be extremely doubtful and based on such fractured evidence accused cannot be held guilty of the offence charged against him.

33) Our Hon'ble Gauhati High Court has also held in 2010 (4) GLR

Page No.445 that mere omnibus statement regarding the demand of money does not ipso facto make out a case U/S.498 (A) IPC .

34) In the instant case also the complainant as well as other P.Ws have stated that the accused persons demanded money and dowry articles from her . But the prosecution failed to prove under what circumstances and when the accused persons made such demand . Accordingly , the evidence of P.Ws does not inspire confidence .

35) The charge of demand of dowry and giving mental and physical torture to the PW2 has not been proved in accordance with law and

hence no presumption of cruelty and harassment can be drawn in this instant case.

36) It may be mentioned that the PW2 had herself stated that when the accused was allotted with a quarter then she was not allowed to go with the accused by her parents.

37) Ld. defence has taken strong objection to the veracity and value of evidence adduced by the PWs regarding the demand of dowry made by the accused person when the aforesaid witnesses have not seen but only heard the same.

38) If the evidence of the PW2 is taken out from the purview of consideration then the evidence of the rest of the PWs cannot be held to be of such nature which would establish the cruelty on the part of the accused persons to bring home the charges of section 498A IPC as none of them are eyewitnesses to the occurrence or are direct evidences.

a. Having considered the facts and circumstances of the case and on perusal of the evidence on record I am of the view that the prosecution has failed to prove the charge of cruelty and harassment beyond all reasonable doubt. Hence accused are acquitted and set at liberty forthwith. Bail bond stands extended for a period of six months.

Given under my hand and seal of this Court on this 9th day of December 2014.

Smti.M.De,

CJM,Bongaigaon.