

**IN THE COURT OF
THE CHIEF JUDICIAL MAGISTRATE::BAKSA
Case No. : PRC-201/18
Under Section 498(A) IPC**

**Present :- Smti. D. Boro, AJS,
Chief Judicial Magistrate, Baksa.**

The State of Assam.....Prosecution.

-Vs-

Hemen Das.....Accused Person.

Evidence recorded on :- 03-07-2019, 22-01-2021,
03-03-2021, 04-06-2022,
08-07-2022.

Argument heard on :- 01-09-2022

Judgment delivered on :- 12-09-2022

Advocate Appeared :-

Mr. Ranjit Basumatary.....APP for the State of Assam.

Mr. Nirmal RajbongshiAdvocate for the accused person.

J U D G M E N T

1. The gist of the FIR is that on 27-10-2017 informant Sikhamoni Kalita Das lodged an FIR before Mushalpur PS to the effect that in October, last year she got married with accused Hemen Das. The co-accused persons are father-in-law, mother-in-law and sister-in-laws of the informant. The accused persons had been

inflicting physical and mental torture to the informant soon after marriage for dowry and money. She was compelled to leave her matrimonial home several times due to torture of the accused persons. But her family had kept her back at her matrimonial house with the help of the villagers. On 12-10-2017 the accused persons had once again physically tortured her demanding dowry and drove her out of the house.

2. Police registered Mushalpur PS C/No.106/2017 u/s 498(A) IPC against four nos. of accused persons and after completion of investigation, submitted charge-sheet only against accused Hemen Das u/s 498(A) IPC.
3. Charge was framed against the accused u/s 498(A) IPC and contents of the charge were read over and explained to the accused person to which the accused person pleaded not guilty and claimed to be tried.
4. The prosecution examined 6 (six) nos. of witnesses. The defence has examined none.
5. The accused person is examined u/s 313 Cr.P.C. The accused person has declined to adduce evidence.
6. I have heard argument of the learned A.P.P. as well as the learned defence counsel and perused all the relevant documents available on record.

7. POINTS FOR DETERMINATION:-

1. Whether the accused person being the husband of the informant had subjected her to cruelty?

8. DISCUSSION, REASONS AND DECISION:

9. POINT NO. 1 :

10. PW1 & 2 are the informant cum victim and her father. From the evidence of the prosecution witnesses, we can see that only the informant PW1 and her father PW2 have said against the accused person. The rest PWs are independent witnesses and have deposed against the informant.

11. The PW1 said that after about three months of marriage, her husband and his family members started to physically abuse her and damage her property for very small issues. They used to assault her and abuse her with filthy language, taunt her and her family members all the day. Her husband and his family members used to demand dowry from her and as she could not fulfil, her husband assaulted her. One day, while she was talking with her parents, her husband snatched the mobile phone and broke it. Likewise, her husband had broken three mobile phones. She informed the matters to her parents. They initially asked her to adjust. She tried to adjust with the accused and his family members. As the torture increased day by day, she could not resist and as such, she returned to her parents in October, 2017. After she returned home, the villagers of her husband

hold a bichar and they suggested her to seek justice from the Court. Accordingly, after three days of her returning home, she lodged the FIR. Ext.1 is FIR.

12. The defence has brought contradiction in the statement of the PW1 and has proved those contradictions through the IO PW6.
13. The IO PW6 has said in his cross-examination that the informant has not said before him the specific time that "after three months of marriage" torture was started upon her. The PW6 further said that the informant has not said before him that "her properties were damaged on small issues; the accused had abused her using filthy language and used to taunt her whole day; her husband broke the mobile phone while she was talking and the accused broke three mobile phones".
14. PW2 Kandarpa Kalita is the father of the informant. He said that after few days of marriage, the informant and the accused started to quarrel with each other. His daughter informed him that she was tortured for not giving bed and furniture. Hence, he gave them necessary furniture and other article within his limitations. Thereafter also, the accused and his family members continued torture on his daughter on different issues. They used to abuse her and taunt her all the time. She was even intimidated with dire consequences if she fails to fulfil the

demands of the accused. Ultimately, when his daughter could not resist, she returned to his house. After her return, he along with some villagers of his village went to the village of the accused and called a bichar there. In that bichar, the villagers of the accused asked the accused and his family members to divide their house and live separately. Initially they agreed, but lastly the accused refused to accept the decision. Accordingly, the villagers asked them to approach police.

15. PW2 said in his cross-examination that his daughter told him that she can restart conjugal life with the accused if his family members allow them to live separately and divide the property accordingly.
16. The IO/PW6 has said that PW2 Kandarpa Kalita has not said before him that "his daughter informed him that she was tortured wanting bed and furniture". PW2 has not said before him that "he gave necessary furniture as per his capacity".
17. PW3 Dipali Choudhury @ Dipika Choudhury said in her cross-examination that the informant left on her own because she wanted the accused to stay at her maternal home. When the accused refused, she left the matrimonial home.
18. The holding of village bichar at the village of the accused is also stated by PW5 Pranjal Talukdar. PW5 said that in the meeting, the informant said that she will not stay in the house

of the accused and will stay in her parents' house. She said that she would keep accused Hemen with her at her parents' house. The informant asked to separate the share of accused Hemen in the property. Accused Hemen agreed to keep the informant at his house and said that he would stay separately from his parents. But the informant did not agree, the villagers did counselling to her but she went away.

19. In cross-examination, PW5 said that she would not stay in the house of the accused, she would keep accused Hemen as 'Ghar-jowai', accused Hemen has to stay at her parents' house separating from his parents.
20. Though the accused has not adduced any evidence, but the accused has stated during his examination u/s 313 Cr.P.C. about holding of bichar at his village. The accused has also stated that the informant proposed to divide the land and give 'bera' (fencing) in between the two parts.
21. From the above evidence, we can see that the informant was ready to stay with the accused but separately from her in-laws. Question arises what does it mean? It may mean that she has no problem with the accused or has less problem with the accused and she has main problem with the parents of the accused. Marriage is an institution, not a union of two persons. It is also a union of two families. A life without the living parents

or separating the parents from the husband is not acceptable. From the prosecution evidence itself, it has come out that the informant has the tendency to separate the accused from his old parents which fact itself draws suspicion about the genuineness of the offence alleged.

22. In the entirety of the facts and circumstance of the case, I find that it is not proved that the accused person being the husband of the informant had subjected her to cruelty. So, the accused person cannot be held guilty u/s. 498(A) IPC.

23. From the above discussions, I am of the considered opinion that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt u/s 498(A) IPC. So, I acquit accused Hemen Das of the charge u/s 498(A) IPC and is set at liberty.

24. Given under my hand and seal of this Court this 12th day of September, 2022.

Typed by me—

D. Boro
CJM, Baksa

D. Boro
CJM, Baksa

APENDIX

PROSECUTION EXHIBITS:

- Ext.1- FIR.
- Ext.2- Sketch map.
- Ext.3- Medical injury report.
- Ext.4- Charge sheet.

DEFENCE EXHIBITS: NIL.

EXHIBITS PRODUCED BY WITNESSES: NIL.

COURT EXHIBITS: NIL.

PROSECUTION WITNESSES :

- PW1- Sikhammoni Kalita Das
- PW2- Kandarpa Kalita
- PW3- Dipali Choudhury@ Dipika Choudhury
- PW4- Pranab Medhi
- PW5- Pranjal Talukdar
- PW6- SI Mirjahan Hussain

DEFENCE WITNESSES : NIL

COURT WITNESSES: NIL.