

**IN THE COURT OF JUDICIAL MAGISTRATE 1ST CLASS :::::::::: BAKSA,
MUSHALPUR**

PRESENT: *Binod Prasad, AJS*
JMFC, Baksa Mushalpur

GR CASE NO- 992/2018
Old G.R. No-779/2015

Goreswar P.S. Case NO- 54/2015
U/S- 498 (A) IPC

State

-Vs.-

Soneswar Kalita

Accused

For the Prosecution : Mrs. Nalini Medhi & Richa Swargiry, Assistant Public
Prosecutor

For the Accused : Tridib Sarma, Learned Advocate

Date of Evidence : 03-10-2016, 06-01-2017, 11-12-2017, 03-07-2018

Date of Argument : 26-09-2018

Date of Judgment : 10-10-2018

J U D G M E N T

1. The brief facts of the case leading to the prosecution of the accused Soneswar Kalita as unfolded from the Ejahar lodged by informant Himani Dekha is that, she got married with the accused on 21/02/2015. It is stated that after marriage she started conjugal life at the house of the accused. It is alleged that at that time the informant was 4 months pregnant but after 15 days of marriage the family members of the accused forcefully got the pregnancy aborted. It is also stated that the accused tortured her mentally for dowry. The informant could not tolerate the torture and she took shelter at her father's house. Hence, the case is for taking necessary action.

2. Upon receiving the Ejahar the O/C of Goreswar P.S. registered the same vide its P.S case No: 54/2015 U/S 498(A) I.P.C. and the police started investigation. On completion of the investigation the police submitted charge sheet against the accused persons namely, Soneswar Kalita, Jayram Kalita and Saru Kalita U/S- 498(A) IPC.
3. On appearance the accused persons were allowed to go on bail and copies of relevant documents were furnished to them. After hearing both sides and perusing materials available on record, a prima facie case was found u/s 498(A) I.P.C against the accused Soneswar Kalita. Accordingly, formal charge under the said section of law is framed and contents of said charges were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. However no prima facie case had been made out against the accused namely Jayram Kalita and Saru Kalita and as such they were discharged.
4. That during trial, prosecution examined five witnesses including the informant. The statement of the accused person u/s 313 of Cr. P.C. was recorded and the accused declined to adduce any evidence.
5. I have heard the argument of the learned defence counsel and the learned Asst. P.P. I perused the case record and scrutinized the evidence on record.

POINTS FOR DETERMINATION

6. After considering the relevant documents and after hearing the defence and the prosecution I find that the following point is to be determined in this case:
 - 1) Whether the accused person being the husband of the informant Himani Deka had been exercising cruelty upon her due to demand of dowry and drove her out from the house, as alleged, and thereby liable to be punished u/s 498(A) of I.P.C.?

DISCUSSION, DECISION AND REASON THEREOF

7. PW-1 who is the informant deposed in her evidence that she had lodged this case against her husband. PW-1 further deposed that since after the

marriage the accused used to torture due to demand of dowry. PW-1 also deposed that when she got pregnant the accused aborted her pregnancy and drove her out from his house. Ext-1 is the Ejahar lodged by PW-1 and Ext-1(1) is the signatures of PW-1.

8. In her cross-examination PW-1 stated that she appeared in HSLC examination in the year 2015 and she got married with the accused in 2015 at the age of 17 years. PW-1 stated that no rituals were performed in her marriage. PW-1 stated that she has not submitted any medical document of her abortion.
9. PW-2 deposed in his evidence that the informant is his daughter and the accused is the husband of the informant and they got married on 21-01-2015. PW-2 further deposed in his testimony that the accused used to beat the informant due to demand of dowry. PW-2 deposed that at the time of marriage he willingly gave furniture to his daughter. PW-2 also deposed that the accused brought tablet from pharmacy and forced the informant to take which resulted in abortion.
10. PW-2 stated in his cross-examination that no rituals were performed in the marriage of the informant.
11. PW-3 and PW-4 deposed in their evidence that they saw the informant at the house of accused for few days and PW-3 also expressed her ignorance about the matter.
12. PW-5 who is the I/O deposed in his evidence that on 13-06-2015 one Himani Deka lodged an Ejahar with the I/C Suagpur and after making GD Entry vide No-243 dtd. 13-06-2015 the Ejahar was sent to Goreswar P.S. for registration. After getting the responsibility of investigation the I/O visited the P.O., drew Sketch Map and recorded the statement of the witnesses. After completion of the investigation the S.I. Nayan Moni Das submitted the Charge Sheet u/s 498A IPC against the accused persons. Ext-2 charge sheet and Ext-2(1) is the signature of SI Nayan Moni Das. Ext-3 is the Sketch Map and Ext-3(1) is the signature of PW-5.

13. 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.

14. It is also settled position of law as envisaged under Section 498-A of IPC that every harassment do not amount to cruelty. In this regard let me refer to the explanations of Section 498-A of IPC which defines 'cruelty'. Explanation (a) of Section 498-A provides that 'cruelty' means 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. Now it is to see whether in the instant case this definition of cruelty befits.

15. In this case though the complainant has brought the some allegations regarding assault and demand of dowry by her accused husband but her testimony is not supported by any of the independent witnesses. The PW-1 failed to mention in her evidence the date or time when the accused assaulted her physically or demanded money from her and in whose presence the accused committed torture upon her. There is also no medical report of the victim in this case in order to see whether any injury sustained by the victim or not. Mere allegation of demand of dowry and commission of torture is not sufficient to bring home the charge under Section 498-A of IPC.

16. The independent witnesses, on the other hand, could not say as to whether the accused and the informant are husband and wife. The accused also denied that the informant is his wife and she got married with the accused. There is no cogent evidence on record that the accused harassed the complainant with such a degree to drive her to commit suicide or which is likely to cause grave mental and physical injury to the complainant. Thus, in the case in hand Explanation (a) of Section 498-A of IPC cannot be applied to bring home the charge under Section 498-A of IPC against the accused.

17. In **Manju Ram Kalita vs. State of Assam [2009 (8) SCALE 794]** Hon'ble Apex Court has held that "Cruelty" for the purpose of Section 498-A of I.P.C. is to be established in the context of Section 498-A of IPC as it may be a different from other statutory provisions. It is to be determined considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide, etc. It is to be established that the woman has been subjected to cruelty continuously or persistently or at least in close proximity of time of lodging the complaint. However in the instant case no such cogent evidence has been adduced by the prosecution regarding commission of cruelty by the accused upon the informant.

18. From the totality of the facts I hold that there is no cogent evidence to show the involvement of the accused persons in committing the offence. Hence from the foregoing discussions it has become abundantly clear that prosecution has miserably failed to bring home the charge under Section 498-A of IPC against the accused beyond all reasonable doubt befitting all basic ingredients of the said section of law.

ORDER

19. In view of what have been discussed herein-above, I am constrained to hold that prosecution has failed to prove the charges u/s 498(A) I.P.C. against the accused person beyond all reasonable doubt. Hence, I hereby acquit the accused person Saneswar Kalita from the said charge on benefit of doubt and set at his liberty forthwith. Bail Bond is extended to a period of six months.

Given under my hand and the seal of this Court on this 10th day of October, 2018.

Class (BINOD PRASAD)
Judicial Magistrate 1st
Baksa, Mushalpur

APPENDIX

Prosecution witness :

P.W.1 Himani Deka
P.W.2 Naren Deka
P.W.3 Mina Boro
P.W.4 Tulshi Biswakarma
P.W.5 ASI Naren Bora

Defence witness :

..... Nil.

Prosecution document:

Ext-1 Ejahar
Ext-1(1) Signature of PW-1
Ext-2 Charge Sheet
Ext-3 Sketch Map
Ext-3(1) Signature of PW-5

Defence document :

..... Nil.

(BINOD PRASAD)
Judicial Magistrate 1st Class
Baksa, Mushalpur