

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, GOALPARA

GR – 350/14

U/S : 498(A) IPC

State

-Vs-

Asraful Alom

**PRESENT: RANJITA AGARWALLA,
CHIEF JUDICIAL MAGISTRATE,
GOALPARA.**

ADVOCATES APPEARED

For the State : Ld. Addl. P.P, Mr. Manaranjan Khaklary.

For the Accused : Ld. Advocate, Mr. Mostakimul Hoque.

EVIDENCE RECORDED ON : 17.07.15, 03.10.15, 26.02.16,
15.05.17, 06.09.17

ARGUMENT HEARD ON : 01.06.19

JUDGMENT DELIVERED ON : 01.06.19

JUDGMENT

The brief facts of the Prosecution case is that on 15.02.14 a written complaint was lodged before this Court by Nur Jahan stating inter alia that on 03.06.12, she got married to the accused, Ashraful Alom as per Islamic Shariat. After the marriage, she lead her conjugal life with the accused. After passing few days, her husband at the instigation of the rest accused persons, Abitara Bewa, Abdul Kader, Abdul Mojid, Nasiruddin demanded money and gold ornaments as dowry and started to torture her mentally and physically. On 07.06.13 at about 7 pm, the accused persons jointly demanded Rs. 1,00,000/- as dowry and 5 tola gold and tortured her inhumanly and drove her out from her matrimonial home. Helplessly, she took shelter at the house of Hamid Mahajan. Subsequently, on 08.06.13, the accused, Abitara Bewa showing herself as innocent, took her from the said house to the house of accused, Abdul Kader. After staying there for a week, she came back to her parental home. After three months of her stay at her parental home, the accused persons made a secret plan and brought her from her parental home. She started staying with the accused, Asraful Alam. Just after passing one and half or two months, the accused persons again demanded Rs. 1,00,000/- cash and on 11.11.13, she was tortured inhumanly and chased away. Helplessly, she took shelter at her parental home. As she was waiting for negotiation of the matter through social intervention, there was delay in lodging this case.

The written complaint was received and registered at Goalpara PS vide Goalpara P.S. Case No. 110/2014 U/S 498(A)/34 IPC. After investigation, Police submitted the chargesheet against the accused, Asraful Alam U/S 498(A) IPC.

On appearance, copy was furnished to the accused. After hearing both the sides and perusal of materials available on record a prima facie case was found against the accused U/S 498(A) IPC. Accordingly, charge U/S 498(A) IPC was framed, read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

Prosecution side has examined only one witness who was duly cross examined by defence.

Statement of the accused is recorded U/S 313 of Cr.PC. Defence also declined to adduce any evidence.

THE POINTS FOR DETERMINATION

- I. Whether the accused being the husband of the informant, Nur Jahan subjected her to physical and mental torture on demand of dowry and drove her out from the matrimonial home on 11.11.13 thereby endangering her life and limb and thereby committed an offence punishable U/S 498(A) IPC;

DISCUSSION, DECISION AND REASONS FOR DECISION

Heard argument forwarded by Learned Counsels on both sides.

PW1, Nur Jahan is the informant who deposed that the accused is her husband. On 31.05.12 she got married to the accused as per Islamic religious rights. Initially four to five months they lead their conjugal life peacefully. After that the accused used to beat her up. The accused persons demanded Rs. 1,00,000/- and 5 tola gold. As she refused to fulfill the demands, she was subjected to physical assault. On 07.06.13, at about 7 pm, the family members of the accused demanded the said amount. As she refused to meet the demand, she was assaulted and drove her out. She stayed at the house of Adbul Hamid that night. Subsequently, the elder brother of the accused, Ahmed Ali took her from the house of Hamid to Bulen Ali's residence. She stayed there for a period of seven days. Subsequently, the accused persons did not enquire about her as such, she came to her parental home. Thereafter, she lodged this case at the Court. Police enquired her. Exhibit 1 is the Complaint Petition. Exhibit 1(1), 1(2), 1(3) are her signatures.

PW2, Rabiul Hoque stated that he knows the informant as well as the accused. On 31.05.12 they got married and initially four to five months they lived together peacefully. Subsequently, the informant apprised him that the accused demanded Rs. 1,00,000/- and 5 tala gold from her. Then she failed to meet the said demands and resultantly, the family members of the accused jointly assaulted her. On 07.06.13 at about 7 pm, the accused persons assaulted her and drove her out of her matrimonial home. At night, she stayed at the house of Hamid Mahajan. Subsequently, Ahmed Ali elder brother of the accused kept her at the house of Balen Ali. Then after a week, she returned to her residence and she lodged this case. Police interrogated him.

PW3, Majid Ali deposed that he knows the informant as well as the accused. Three to four years back, both the parties got married. He could not say how long the parties lived together peacefully. Subsequently, he came to know that informant went to her parental home. He has no knowledge relating to what quarrel happened between both the parties.

PW4, Nurul Nabi Siddique deposed that he knows the informant as well as the accused persons. Two and half years back, both the parties got married. Initially, five to six months they lived peacefully. Then the informant left the accused's house. He came to know that she does not like the accused.

PW5, Naser Ali deposed that he is the brother-in-law of the informant and the accused is his cousin. The accused and the informant got married seven to eight years back. Initially two to three months they lived peacefully. Subsequently, Ashraful gave divorce to Nur Jahan. He does not know the reason of divorce. He came to know that Nur Jahan lodged this case relating to the divorce.

PW6, Abdul Kader deposed that he knows the informant as well as the accused. Both the parties got married in the last of year 2013. He heard from Nur Jahan that the accused assaulted her as he did not want to keep her with him. At present, he came to know that the informant and the accused both of them got remarried. Police never enquired him.

PW7, Abdul Hamid Miah S/O Lt. Abdul Goni Mia deposed that he does not know the informant. He knows the accused persons. The accused got married with Nur Jahan. He has no knowledge about the incident of this case.

PW8, Abdul Hamid Miah S/O LT. Hazimucha Miah deposed that he knows accused and the informant Ashraful's wife. Both of them got married. He has no knowledge about the incident of this case.

Now from the material available on record, it reveals that the marriage between both the parties is an admitted fact. Since the accused in his recorded statement U/S 313 Cr.PC. admitted the fact and now the question arises whether the accused tortured the victim with

cruelty as defined in explanation of cruelty U/S 498(A) IPC : **(a) Any willful 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 any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Here, PW1 in her evidence as well as the complaint petition stated that the accused demanded Rs. 1,00,000/- and 5 tola gold. PW2, brother of the informant also asserted the said facts and here PWs are silent why the demand was made. Since defence disputed the said fact during cross examination of PWs. Therefore, it is boundant duty of the prosecution side to prove the same to attract the offence U/S 498(A) IPC. A mere demand of dowry is not satisfactory it must lead to some cruelty caused to the victim. PW1 asserted that when she refused to meet the demand, she was subjected to physical assault. Finally on 07.06.13 as she failed to meet the demand, she was driven out from her matrimonial home. Thereby she took shelter at the house of Adbul Hamid. Subsequently, the brother of the accused took her to the house of Bulen Ali. Thereby, she left to her parental home. Here, PW1 has not specifically stated as to why she was subjected to physical assault. Whether she sustained any injury for which whether she took medication.

Mere torturing is not satisfactory to hold that she was actually subjected to physical assault to such extent to attract offence u/s 498(A) IPC. More so, PW1 alleged that she took shelter at Abdul Hamid's house further in her evidence she asserted that she took shelter at the house of Hamid Mahajan. Here, prosecution side has examined two numbers of Abdul Hamid Miah PW7 and PW8 but both of them candidly conceded that they have no knowledge about the incident of this case. In absence of corroboration of the evidence, it is difficult to rely upon her version. Moreover, perusal of the injury report available with the case record reveals that Nur Jahan Khatun was examined on 09.03.14 at Kharmuja Mini PHC whereby the Doctor found tenderness over her back left side and moderate tenderness with an alleged history of assault on 09.03.14 but the said PW1 in her testimony is silent in this respect.

Interestingly, though PW1 in her evidence is silent that after three months staying at her parental home, the accused persons came to her parental home and negotiated the matter and thereby, she resumed her conjugal life with the accused. Subsequently, after staying one to two months i.e., on 11.11.13, the accused persons demanding the previous dowry amount and gold tortured her inhumanly and chased her out from her matrimonial home. As such, since then, she has been taking shelter at her parental home and the case was lodged on 15.02.14. Since the victim was medically examined on 09.03.14 with an alleged history of assault of the same day, it cast serious doubt upon the story designed by the prosecution. Though, PW2 corroborated the version of PW1 that she was subjected to torture on demands of Rs. 1,00,000/- and gold of 5 tola and as she was failed to meet the demand, on 07.06.13 at about 9 pm, she was driven out duly physical assault. Since the said witness is also mum that the amount was demanded why she was subjected to torture and why the amount was demanded, it is difficult to rely upon the evidence of PW1. Moreover, there is none to corroborate though prosecution side has examined other six witnesses but except PW1 and PW2, none of the prosecution witnesses have stated that PW1 was subjected o torture due to non fulfillment of the dowry demands. Moreover, PW4 negates the prosecution story by asserting that the informant left the accused's house as she did not like the accused and PW3 stated that he knows that the informant left to her parental home but he has no idea as to why she left for her parental home.

Further, PW2 stated that regarding divorce of both the parties, again it is worthwhile to mention that though PW6 asserted that he came to know from Rubial Hoque that the accused assaulted Nur Jahan as he did not want to keep her but Rabial Hoque who stands here as PW2 never uttered the said facts. He never stated that he appraised the matter to PW6. Therefore, evidence of PW6 being hearsay witness have not much value in the eye of law.

Thus, from the above discussion, it appears that as the version of PW1 is not supported by any independent witness as well as medical evidence, more so her evidence is not found complete to book the accused, Asraful Alam U/S 498(A) IPC.

ORDER

In view of the above analysis the accused, Asraful Alam is acquitted of the offence U/S 498(A) IPC and he is set at liberty forthwith. Bail Bond shall extend up to six months from today.

Dictated under the seal of the court and bearing my signature on 01/06/19.

**(Ranjita Agarwalla, AJS)
Chief Judicial Magistrate,
Goalpara.**

APPENDIX

PROSECUTION WITNESSES:

PW1: Nur Jahan
PW2: Rabiul Hoque
PW3: Majid Ali
PW4: Nurul Nabi Siddique
PW5: Naser Ali
PW6: Abdul Kader
PW7: Abdul Hamid Miah
PW8: Abdul Hamid Miah

DEFENCE WITNESS :

NONE

PROSECUTION EXHIBIT :

Exhibit 1: Ejahar

DEFENCE EXHIBIT:

NONE

**(Ranjita Agarwalla, AJS)
Chief Judicial Magistrate,
Goalpara.**