

IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE (SADAR)
TINSUKIA

Present: S. Sultana, AJS
SDJM(S), Tinsukia

GR CASE NO. 433/2017

U/S 498(A)/506 IPC

State of Assam

Vs

Shibu Ghosh

.....ACCUSED

Advocate for prosecution: Learned Banti Hazarika

Advocate for defence: Learned G. Pareek

Charge framed on: 05-05-2018

Date of Evidence: 07-06-2018, 08-03-2019, 24-04-2019

Date of Argument: 24-06-2019, 08-07-2019

Date of Judgment: 23-07-2019

JUDGMENT

1. The prosecution case succinctly is that informant on 27.02.2017 lodged an ejarah stating that in the month of August,2015 she and accused Shibu Ghosh had registered their marriage before the Office of the Marriage Registrar at Dibrugarh. Informant alleged that just after the expiry of one month of their marriage, her husband started putting question about her chastity and doubted her character, torturing her both mentally and physically, addressing her with filthy languages and dirty

words over mobile phone, and denied to take her to his house and hence their marriage never consummated as they have never lived as husband and wife.

Informant also alleged that since the day of her marriage, she is residing along with parents at Makum and as and when she asked her husband to take her to his house, he refused to do so and demanded from her a sum of Rs.2,00,000/- as dowry and told her that, if she is unable to pay the said amount of dowry to him he will not give her the status of wife and he regularly gave her messages over mobile phones, threatening her that he will commit suicide and will drag her and her parents in false case and thereby put all of them behind the bar.

Informant further alleged that on 27.02.2017 at about 11:30AM her husband along with some antisocial elements entered into her cousin's house situated at Gandhi Nagar, Tinsukia where informant resided along with her mother, and started addressing her and her mother with filthy languages and dirty words and again demanded from her the dowry as aforesaid but due to intervention of her family members they left the place by giving threatening that he will not spare her and will implicate her and her family members in a false case.

Thus, the above facts and circumstances led to the filing of the instant complaint and set the prosecution case in motion.

2. Based on the ejahar, Makum P.S Case No. 49/17 u/s 498(A)/448/294/506/34 IPC was registered. After completion of investigation, Investigating Officer submitted charge-sheet against accused person namely Shibu Ghosh u/s 498(A)/506 of IPC for his prosecution under the aforesaid sections of law.
3. Relevant copies of documents were furnished to above mentioned accused person as per provision of law. Charge u/s 498(A)/506 IPC was framed, read over and explained to accused to which accused person pleaded not guilty and claimed to be tried.

4. In this instant case, 4 (four) prosecution witnesses (hereinafter referred to as PWs) were summoned, examined-in-chief and cross examined.
5. Statement of defence u/s 313 CrPC has been recorded. Defence did not tender any evidence in its support and denied the allegations brought against it. I have heard arguments advanced by both sides, with each side trying to establish its stand. I have also perused the entire case record.

POINTS FOR DETERMINATION:

6. The points of determinations are as follows:-
 - (1) Whether accused being the husband of informant, had physically and mentally tortured the informant and subjected her to cruelty by demanding Rs.2,00,000/- as dowry after one month of their marriage and thereby committed an offence u/s 498(A) of IPC?
 - (2) Whether accused on 27.02.17 at about 11:30AM committed criminal intimidation by threatening Smti. Puja Dey with intent to cause harm to her and thereby committed an offence u/s 506 of IPC?

REASONS, DISCUSSIONS & DECISIONS THEREOF:

7. I have gone through the evidence of the PWs to arrive at a decision.
- 8. PW-1/Informant Smti. Puja Dey** has deposed in her evidence that she lodged this case against accused Sibu Ghosh. PW1 also deposed that on 19.08.2015 she did Court marriage with the accused in Registrar Office, Dibrugarh. After Court marriage, PW1 was staying in her mother's house in Dibrugarh. PW1 deposed that accused never visited her mother's house. PW1 asked accused for social marriage and requested him to take her to his home. Accused replied PW1 that her social marriage has to be done in Bibah Bhavan like Hotel Garden Treat and Dutta Park Exotica or else PW1 has to carry an amount of Rs.2,00,000/- with her. PW1 deposed that accused used to abuse her over phone and doubted her character. Accused kept the marriage certificate with him and did not give her a single document and told her that PW1 has to stay

with him for three days, then only he will give her marriage certificate. PW1 deposed that on 27.02.2017 she was in her aunt's house at Makum and the accused came with some other persons and wanted to take her, but she did not want to go, as before that she had already filed divorce case. PW1 deposed that after getting threatening from accused on that day, she lodged ejahar in Makum Police Station.

In her cross examination, PW1 has deposed that the evidence she deposed in Court, were told to police by her. PW1 has filed divorce case in Tinsukia in the Court of District Judge, Tinsukia. PW1 has filed the divorce case after one month of her marriage. PW1 does not remember the case number of the divorce case. PW1 has not submitted the threatening SMS as she has broken her mobile phone. All the incidents which PW1 mentioned in chief were done over phone. PW1 does not remember if she has written the mobile number in Ext-1. The ejahar given by PW1 was in Assamese. PW1 had not seen that ejahar in Court. PW1 deposed that Ext-1 was signed by her in police station. PW1 does not know where police typed Ext-1. Later on, PW1 deposed that the Ext-1 was typed by one Sudeep uncle and PW1 does not know where is his house. PW1 was in love with the accused for 5-6 years and so she married him. PW1 deposed that as she has voluntarily married the accused, so she did not bring any of her family members at the time of her marriage. PW1 deposed that they have taken various photos together after Court marriage till 2-3 months and visited various places. PW1 has visited her aunt's house at Borpathar, Dibrugarh and also visited various parks and restaurants to eat. PW1 deposed that she visited with the accused to various places after marriage and this was not liked by her parents. Till one year after marriage, the relation between PW1 and the accused was sometimes good and sometimes bad. PW1 deposed that her parents came to know about her marriage after 7 months of marriage. PW1 deposed that she has visited all the aunts (mother's sister) house of the accused.

In her further cross examination, PW1 has deposed that she has mentioned in her ejahar that her marriage with the accused never got consummated and she has stated the same before police. PW1 deposed

that on 27.2.17 accused lodged a case on her mother, her father, her younger sister and her aunt (pehi) and the case has been registered as Dibrugarh P.S. Case No.241/17 and the case is pending till date. PW1 deposed that it has been alleged by accused in Dibrugarh P.S. case No.241/17 that accused was misbehaved and beaten by her family members when he went to bring her. PW1 was in her aunt Maya Rai's house at Makum when accused went to bring her. Thereafter accused filed a case on family members of PW1 however PW1 does not remember the date when the case was filed. PW1 deposed that she does not know exactly who had gone to her house at Dibrugarh however her younger sister told her that mother of accused, maternal aunt of accused (Mami) and some other persons went to their house at Dibrugarh. PW1 has not mentioned the date and place where she was demanded sum of Rs.2,00,000/- by the accused. PW1 has not stated before police in her statement the date and place where she was demanded sum of Rs.2,00,000/- by the accused. On 27.2.17 PW1 did not see face to face with accused. PW1 has not stated before police in her statement that from the day of their marriage accused has not given her recognition as his wife. PW1 has deposed that she has stated before police in her statement whatever she has deposed in her examination in chief, cross examination on earlier occasion and her cross examination. Accused did not directly verbally abused PW1 on his visit to Makum at her aunt's house. PW1 has stated before police that accused went to Makum to her aunt's house and addressed her and her mother's name and demanded money. PW1 has not filed any divorce case in Tinsukia. PW1 does not know if any suit for restitution of conjugal rights has been filed by accused against her.

In rest of the evidence, PW1 has denied the suggestions put by the defence.

PW-2 Bapi Raj Roy has deposed in his evidence that he does not know the accused who was present in court. PW2 deposed that informant is his cousin. Informant got married with a person named Shibu Ghosh in 2015. It was a court marriage. PW2 does not remember

the date. PW2 does not know where the court marriage was done. PW2 could not say if the accused who was present in court is the person with whom informant had court marriage. PW2 deposed that Informant sometimes used to stay at their house at Makum. One day informant along with PW2 and PW2's mother came to Tinsukia market and in the meantime the person named Shibu Ghosh along with some other persons went to their house at Makum and was searching for informant. PW2 deposed that his neighbours later informed him that Shibu Ghosh came searching for informant along with other persons. One of neighbours named Ratna Prasad told PW2 that Shibu Ghosh came searching for informant along with other persons. Thereafter informant told PW2 that she will file a case against Shibu Ghosh and the ejahar was lodged thereon.

In his cross examination, PW2 has deposed that he accompanied informant when she went to lodge the ejahar at Makum P.S. On the day of incident i.e. 27.2.17 PW2 and informant were in Tinsukia Market and as such the person named Shibu Ghosh, PW2 and informant did not come face to face or had any verbal altercation. Police did not examine PW2. PW2 deposed that police did not examine hime.

PW-3 Smti. Simi Dey has deposed in her evidence that she knows the accused Shibu Ghosh who was present in court with whom her daughter Puja Dey had court marriage. PW3 also deposed that informant is her daughter. PW3 does not remember the date of their court marriage however, informant and accused got married in 2015. PW3 deposed that after court marriage, informant used to stay at their house and she was not taken to her matrimonial house formally by the accused. PW3 deposed that she went to house of accused in December 2016 and met his parents however, father of accused told her that he will not get accused married at that time and will let them know when he does so. Accused told PW3 that he could not say anything, his parents had all the say in his matters. PW3 deposed that accused's mother told her that informant could not come to their house with empty hands, she must bring furnitures and other articles and the

marriage party has to be given by PW3 at DATTA'S PARK. Thereafter PW3 told about the above mentioned things to her daughter/informant, she had a fight with accused over phone and thereafter she stopped having food and kept low. Looking at informant's behaviour PW3 sent her to her aunt's (pehi) house in Makum. PW3 accompanied informant to Makum and thereafter PW3 left for Dibrugarh. PW3 heard from her nephew's wife that accused came searching for informant at her aunt's house in Makum while she was in Tinsukia market with her aunt (pehi). PW3 deposed that thereafter her daughter lodged this case against accused.

In her cross examination, PW3 has deposed that she has seen accused Shibu Ghosh only one day. PW3 deposed that accused lodged a case against them alleging that on 27.2.17 PW3 and her husband and other family members verbally abused him and threatened him. That case is still pending in Dibrugarh court. PW3 has stated before police in her statement whatever she has deposed in her examination in chief and cross examination. PW3 has stated before police that she did not want informant to get married with accused. What happened between informant and accused PW3 has no knowledge about the same. PW3 does not know what had occurred between informant and accused. PW3 knows about the court marriage of informant and accused however she does not know what had occurred between informant and accused.

In rest of the evidence, PW4 has denied the suggestions put by the defence.

PW-4 Smti. Ratna Prasad has deposed in her evidence that she personally does not know accused Sibhu Ghosh who was present in court. However PW4 has seen accused once. PW4 knows the informant Puja Dey. PW4 also deposed that on 27.2.17 the incident occurred in the morning at around 9-10AM. PW4 came home after dropping her daughter at school. On reaching home PW4 found accused Sibhu Ghosh to be standing in front door of her house and he was asking for informant Puja Dey. PW4 deposed that accused searched for informant in her house but she was not at her home. Accused thereafter told PW4 that he is married to informant to which PW4 replied that she has never

seen vermilion/sindoor on her forehead. PW4 deposed that thereafter accused left her place.

In her cross examination, PW4 has deposed that she has stated before police whatever she has deposed in court in her examination in chief. PW4 deposed that she has come to court in a car and she has been accompanied by Bapi, Maya and Sima who are relatives of informant. PW4 has met mother of informant and informant in court. PW4 has recognised accused on her own as she has seen him once before. PW4 does not have personal knowledge about the incident except the incident that occurred on 27.02.17.

In rest of the evidence, PW4 has denied the suggestions put by the defence.

9. Instant case is under section 498(A) IPC.

To attract section 498(A) IPC it must be proved through evidence that the wife has been harassed to meet any unlawful demand for money which is necessary to constitute cruelty. And the consequences of cruelty should be such that it is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical, of the woman which is required to establish in order to bring home the application of section 498(A) IPC.

The object of section 498(A) is prevention of the dowry menace.

Hence, there is must be clear supporting evidence against the husband and his relatives to base conviction. Mere allegations against the husband or his relatives cannot be taken at face value in absence of sufficient corroborated evidence proving guilt of accused beyond all reasonable doubts.

In this instant case, it is found from evidence of PW-1 that she lodged the case against accused when he went searching for her at her aunt's house

in Makum. However, PW-1 was not present in her aunt's house and she came to Tinsukia town for marketing with PW-2 who is her cousin.

PW-1 has stated in the ejahar as well as deposed in her evidence that after Court marriage with accused, she did not stay with him in her matrimonial house. PW-1 deposed that the alleged demand for dowry was made on phone. There is nothing on record to prove that such demands were made on phone by accused.

PW-2 who is the cousin of PW-1 has not deposed anything material in connection with the case as he was not present either in the Court marriage or the incidents that have taken place thereafter. PW-2 merely accompanied the informant when she went to file a case against accused. Infact, PW-2 has never seen the accused and does not know him.

PW-3 who is mother of the informant has deposed that informant never stayed with the accused. From evidence of PW-3, it is found that mother of accused told her that informant must bring with her furnitures and other articles and the marriage party has to be given in Dutta's park.

However, this raises a contradiction as PW-1 has deposed in her evidence that accused told her to bring an amount of Rs. 2 lac with her. While PW-3 has deposed that mother of accused demanded articles and furnitures, PW-1 has deposed that it was accused who demanded the money.

PW-4 who is an independent witness has deposed that on 27.02.2017 accused came searching for informant at her aunt's and enquired about informant to PW-4 and also told her that he has married the informant.

In rest of the evidence, PW-4 has deposed nothing material.

It is found that none of the PWs have supported the evidence of PW-1.

Even if the sole evidence of PW1 is taken into consideration, it is found that accused and informant never resided together to have their share of

matrimonial disputes. The evidence of informant does not inspire confidence. Neither informant nor any of the other witnesses have deposed as to any threatening given by accused to her. As such, prosecution could not establish the allegations u/s 498(A)/506 IPC brought against the accused person.

10. It has been held in **Rang Bahadur Singh Vs. State of UP, AIR 2000 SC 1209** that the time-tested rule is that acquittal of a guilty should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilt of the accused beyond reasonable doubt, a conviction cannot be passed on the accused.
11. In light of the discussions made above, the inevitable conclusion, therefore is that prosecution has failed to bring home the charges levelled against the accused beyond the pale of reasonable doubt and accordingly, accused person is entitled to acquittal.
12. In the result, accused Shibu Ghosh is acquitted from the charges u/s 498(A)/506 of IPC levelled against him and he is set at liberty forthwith.
13. Bail bonds furnished on his behalf shall remain in force for a period of six months.
14. Given under my hand and seal of this Court on this 23rd day of July, 2019.
15. Case is disposed off hereby on contest.

(Salma Sultana)
Sub-Divisional Judicial Magistrate (S),
Tinsukia, Assam

ORDER

Accused Shibu Ghosh is present.

Judgment is ready and has been delivered and pronounced in open Court.

Accused Shibu Ghosh is acquitted from the charges u/s 498(A)/506 of IPC levelled against him and he is set at liberty forthwith.

Bail bonds furnished on his behalf shall remain in force for a period of six months.

Given under my hand and seal of this Court on this 23rd day of July, 2019.

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Sub-Divisional Judicial Magistrate (S),
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APPENDIX

PROSECUTION EXHIBIT:

Ext.1- Ejahar

DEFENCE EXHIBITS:

None

PROSECUTION WITNESS:

PW1- Smti. Puja Dey (Informant)

PW2- Bapi Raj Roy

PW3- Smti. Simi Dey

PW4- Smti. Ratna Prasad

DEFENCE WITNESS:

None

(Salma Sultana)
Sub-Divisional Judicial Magistrate(S),
Tinsukia, Assam