

**THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, DIBRUGARH**

**G.R. CASE NO.- 3309/2013**

**U/S 498-A/323 OF THE IPC**

STATE

VS.

1. SRI BASU DEY  
S/O LATE RAKHAL CHANDRA DEY
2. SMT. DIPALI DEY  
W/O LATE RAKHAL CHANDRA DEY  
BOTH ARE R/O JALAN NAGAR  
P.S. DIBRUGARH
3. SMT. SUCHITRA DEBNATH  
W/O SRI JOY DEBNATH  
R/O BORBARI  
BOMBAY COLONY  
P.S. DIBRUGARH

PRESENT:- KAUSHIK KAMAL BARUAH  
JUDICIAL MAGISTRATE FIRST CLASS  
AT DIBRUGARH

APPEARANCES:- SMT. LAKHIMI MOHAN.....FOR STATE

SRI SAMIR KUMAR TODI

AND

SRI ALOK GARODIA.....FOR ACCUSED

DATE OF EVIDENCE:- 04/06/16, 29/07/16, 11/01/18, 12/11/18,  
17/12/18.

DATE OF ARGUMENT:- 24/04/19.

DATE OF JUDGMENT:- 04/05/19.

**JUDGMENT**

1. Accused Basu Dey, Dipali Dey and Suchitra Debnath stood trial for offences punishable under sections 498-A/323 of the Indian penal Code, 1860 (the IPC for short).

2. Above named accused persons have been arraigned in this case on the basis of a First Information Report (FIR for short) filed by informant, Rajashree Dey, alleging therein that, since her marriage with accused Basu Dey, she had been continually subjected to acts of physical and mental torture by him in demand for dowry. Co-accused Dipali Dey and Suchitra Debnath are her mother-in-law and sister-in-law respectively, who actively participated with her husband in meting out cruelty upon her. Finally, on 11/11/13 at about 01:00 PM, with a view to relieve her from her miseries at the hands of the accused persons, her family members including her maternal uncle, Sajal Debnath, had been to her matrimonial home to take her back, but her husband attacked them and inflicted severe injuries on the person of said Sajal Debnath.
3. On the same day, informant named above lodged a written FIR before the In-Charge of Borbari Police Outpost which was forwarded to the Officer-in-Charge of Dibrugarh Police Station for necessary action. On receipt thereof the FIR was registered and numbered as Dibrugarh P.S. Case No.1227/2013 under section 498-A of the IPC. During the course of investigation, the investigating officer visited the place of occurrence, recorded the statements of witnesses under Section 161 of the Code of Criminal Procedure, 1973 (the Cr.P.C. for short), made a rough sketch map of the place of occurrence, collected injury report of the victims, arrested accused Basu Dey and forwarded him to Court for necessary action against him. Said accused was forwarded to judicial custody. Statement of the informant under section 164 of the Cr.P.C. was also reduced to writing.
4. After completing the investigation, the Investigating Officer submitted charge-sheet to prosecute the FIR-named accused persons for offences under sections 498-A/323 of the IPC. In the meantime, accused Basu Dey was allowed to go on bail.
5. Court processes were issued and on their appearance the accused were allowed to go on bail. Copies of relevant documents was furnished to the accused persons in compliance with section 207 of the Cr.P.C. Particulars of the offences under sections 498-A/323 of the IPC were read over and

explained to the accused persons to which they pleaded not guilty and claimed to be tried.

6. Prosecution examined four witnesses and evidence stood closed vide order dated- 17/12/18. Thereafter, the accused were examined under section 313 of the Cr.PC. by putting questions to them from all incriminating materials appearing against them on record, thereby, giving them an opportunity to explain the same. In response, they denied the allegations levelled against them *in-toto* and also declined to adduce evidence in their support.
7. Heard arguments advanced by learned Assistant Public Prosecutor and learned defence counsel.

### **POINTS FOR DETERMINATION**

- a) Whether accused Basu Dey, husband of Smt. Rajashree Dey, and Dipali Dey and Suchitra Debnath, relatives of co-accused person, on 11/11/13 at about 01:00 PM and on previous occasions at Jalan Nagar within Dibrugarh PS, subjected said Smt. Rajashree Dey to acts of cruelty, mental and physical, with a view to coerce her to meet any unlawful demand for property?
- b) Whether accused Basu Dey on the same day, time and place voluntarily caused hurt to said Smt. Rajashree Dey and Sri Sajal Debnath?

### **DISCUSSION, DECISION AND REASONS THEREON**

8. In order to establish the allegations against the accused persons, prosecution examined Rajashree Dey, Sajal Debnath, Krishna Das and Wazidur Rahman as PW1, PW2, PW3, PW4 respectively and closed evidence.
9. Here, in the case at hand, PW1, that is, Rajashree Dey, was the purported victim of harassment meted out to her by her husband, Basu Dey, and in-

laws, Dipali Dey and Suchitra Debnath, within the confines of her matrimonial home. That, her husband and in-laws made unlawful demands for dowry and on that account she was persistently harassed by the accused persons named above and for this reason the accused persons, namely, Basu Dey, Dipali Dey and Suchitra Debnath, are prosecuted for the offence of cruelty as described and punished under section 498-A of the IPC.

10. In order to establish the offence proscribed under section 498-A of the IPC against the accused persons, prosecution examined Rajashree Dey as PW1 on 04/06/16. In her examination-in-chief, she deposed that her marriage with accused Basu Dey was solemnized on 29/07/08 in Kamakhya temple, Guwahati. Thereafter, both resided in Guwahati for few days as spouses before returning to her husband's house. But, after about three months of her marriage, her husband subjected her to acts of physical cruelty on instigation of the co-accused persons. Her mother-in-law, Dipali Dey, taunted her as she eloped with her son and for not fetching marriage articles with her. As such, after six months of her marriage she requested her father over phone to give her articles such as gold ornaments, furniture, money, etc., after complying with the existing customs. Her parents complied with her requests and gave her furniture, gold chain to her husband, cash amount of Rs.20,000/- (Rs. Twenty thousand only), gold ring, etc. About four to five months thereafter, her husband and mother-in-law again demanded an amount of Rs.50,000/- (Rs. Fifty thousand only) from her, but when she informed them of her father's poor financial condition, her husband struck her violently by means of a table fan inflicting serious injury on her head.
11. After three years of their marriage she gave birth to a boy child at Dibrugarh Civil hospital but accused Dipali Dey and Suchitra Debnath paid no visit to her. Three days thereafter she along with her infant went to her mother's house at Digboi in the company of her husband and mother. Her husband returned on the same day. After about four days she called her husband over phone on the occasion of her infant's christening but he

refused to come. Two months thereafter her husband went to her mother's house to take her back but she refused fearing harassment at the hands of her mother-in-law. As such, he manhandled her there and forcibly brought her back with him. Then, one day after five months of her son's birth, when she was lying unwell in her bed-chamber, accused Dipali Dey and Suchitra Debnath manhandled her and forcibly shoved her into the kitchen. Next morning somehow she and her infant managed to flee to her mother's house where she stayed till the Durga Puja celebrations of 2013. It was during the Durga Puja of 2013 that her husband came to her mother's house beseeching her to return to his fold. She complied to his requests and to the counsel of her parents and accordingly returned that very day to her matrimonial home along with her infant. But, 10 days thereafter accused Dipali Dey made a demand for an amount of Rs.50,000/- (Rs. Fifty thousand only) for business purpose. On 08/11/13 she went to her parents' house leaving her infant with her husband. But on witnessing her father's pitiable condition she informed her inability to her husband over phone. However, her husband remained stout and told her to fetch at least an amount of Rs.10,000/- (Rs. Ten thousand only). The next day, that is, on 09/11/13, she returned to her matrimonial home without any money as demanded. At that, accused Suchitra Debnath remarked to co-accused Dipali Dey that she returned ***'empty pocket'***. That evening she was brutally tortured by her husband and the co-accused persons and, at about 10:30 PM, her husband kicked her out of the matrimonial home along with her infant.

12. On 10/11/13 she informed her uncle Nripen Debnath over phone about the occurrence and requested him to arrange for money. Next day, that is, on 11/11/13 at about 12 o'clock in the noon, her father arrived at her matrimonial home along with her maternal uncle Sajal Debnath. When they inquired her husband about the incident she was physically assaulted by the accused persons in front of their eyes. Her maternal uncle, Sajal Debnath, wanted to escort her back to her parents' house. At that accused Dipali Dey handed over a kitchen knife to co-accused Basu Dey uttering

**'Kill her and I will arrange for your bail'**. As her husband attacked her with the kitchen knife, her maternal uncle, Sajal Debnath, intervened and the blow fell on his back inflicting a cut injury thereon. Somehow, Sajal Debnath rescued her and took her to the safety of his car. Thereafter, she along with her father and uncle went to Gabharupathar PS and filed an FIR complaining about the occurrences. Ext.1 is the FIR and Ext.1(1) is her signature thereon. Her statement under section 164 of the Cr.P.C. was also recorded vide Ext.2 whereon she affixed her signature vide Ext.2(1). Since that day she has been residing in her parents' house.

13. Now, from the testimony of PW1 as tendered in her examination-in-chief, it appears that she had given the Court a vivid description of the ordeal which she had suffered in the hands of her husband and the co-accused persons. It further surfaces that on the day of her ouster, Sajal Debnath was present in her matrimonial home who also suffered injury on his person. Said Sajal Debnath was examined by the prosecution as PW2 on 29/07/16.
14. In his examination-in-chief, Sajal Debnath deposed that the informant is his niece and that she eloped with accused Basu Dey and got married with him. As such, he is not aware about the date of their marriage. But, in the morning of 11/11/13 he received a phone call from informant's father who informed him that she had visited his house about two days ago to fetch money for her husband. However, he could not pay her and on her return she was physically tortured by her husband Basu Dey. That day, on his way to Dibrugarh along with informant's father, the latter told him that his daughter implored him over phone to rescue her from the clutches of the accused persons and that the tortures have become unbearable for her. On their arrival in accused persons' house, he saw a heated argument taking place between the informant and accused Basu Dey. Informant's father said that he would take his daughter along with him for her treatment. Abruptly, accused Basu Dey attacked her with a kitchen knife but the blow fell on his back as he intervened. Somehow, he managed to rescue the informant and her infant son and took them to Gabharupathar

Outpost where she filed an FIR. From there they were taken to Borbari Outpost where he affixed his signature on a seizure list. Ext.3 is the said seizure list and Ext.3(1) is his signature thereon.

15. With a view to add teeth to the version, prosecution, on 11/01/18, examined an independent witness, namely, Krishna Das, as PW3. But, in her evidence she deposed nothing against any of the accused persons. She even refused to recognize the informant. She further deposed that the accused are her neighbors and that she knew nothing about their filial matters.
16. Lastly, on 12/11/18, prosecution examined the investigating officer, Wazidur Rahman, as PW4. In his examination-in-chief, he testified that on 11/11/13 he was posted as Sub-Inspector at Borbari Police Outpost. On that day at about 08:20 PM, he received a written FIR from Rajashree Dey who came through Gabharupathar Police Outpost. Her medical examination was already done through Gabharupathar Outpost and she was forwarded to Borbari Outpost to file FIR as the place of occurrence fell within its jurisdiction. On receipt thereof, In-Charge of Bobari Outpost entrusted him with the task of investigating the occurrence. On that day he seized a kitchen knife on being shown by the informant. Next day he recorded statements of the informant including other witnesses. Thereafter, he proceeded to the place of occurrence and made its rough sketch map. In the meantime, the FIR was registered under section 498-A of the IPC. He recorded statements of accused Basu Dey in the PS and placed him under arrest. Co-accused persons appeared before him after surrendering in Court. He recorded their statements and allowed them to go on bail. During the course of the investigation he collected medical report of the victims of the occurrence and also had the informant's statement under section 164 of the Cr.P.C. reduced to writing. After completing the investigation he filed charge-sheet against the FIR named accused persons for offences under sections 498-A/323 of the IPC. Ext.3, Ext.4 and Ext.6 are the seizure list, sketch map and charge-sheet respectively whereon he had affixed his signatures vide Ext.3(2), Ext.4(1)

and Ext.6(1) correspondingly. Ext.5 and Ext.7 are the medical reports of the victims collected by him during the course of the investigation.

17. Now, the above set of facts and exhibits tendered by the witnesses named above, especially by PW1 and PW2, are collectively the incriminatory arsenal available with the prosecution. It transpires from their testimonies that PW2 had categorically corroborated PW1 with respect to the occurrences that had happened in her matrimonial home on 11/11/13 and not with regard to the incidents of which she narrated of having taking place prior to it.
18. In addition to their testimonies, prosecution has in its store the FIR and informant's statement under section 164 of the Cr.P.C., that is, Ext.1 and Ext.2 respectively. But neither Ext.1, nor, Ext.2 are substantive evidence of the facts stated therein. Facts stated in either of the two cannot be accepted as Gospel truth but each can be employed for the limited purpose of either corroborating, or, contradicting its maker by the prosecution or by the defence respectively.
19. A cursory glance at Ext.1 shows that PW1, Rajashree Dey, had tersely but sufficiently alleged about the overt acts committed by the accused persons on the date of her ouster from her matrimonial home, that is, on 11/11/13. But with respect to the allegations of cruelty and harassment committed on her, including the demands for dowry, which she had made in her examination-in-chief, were wound up in Ext.1 in a very general manner. In my opinion, therefore, Ext.1 is corroborative vis-à-vis her present testimony only to the extent of her allegations of facts that took place on 11/11/13 and not beyond.
20. On the other hand, like in her examination-in-chief, PW1, Rajashree Dey, had tendered a vivid but truncated account in Ext.2 of her ordeal in the hands of the accused persons. But, here the defence had pressed into service its arsenal against the prosecution version in the form of cross-examination.
21. During the course of her cross-examination, PW1, Rajashree Dey was confronted with questions relating to her marriage, employment of her

husband and their families' respective social status. She replied that she got acquainted with Basu Dey over phone, courted for about two years, eloped and got married with him on 29/07/08. On 28/01/11 she gave birth to a boy child. However, her family members, especially her uncle Nripen Debnath was employed in Oil India Limited (OIL for short) and their marriage was not at all accepted by them on account of the low social status of her husband. Her husband switched various employments from a cosmetics shop at Naliapool at the time of their marriage to Sohum Shoppe at Dibrugarh after the birth of their son. At the time of her son's birth he worked at Max Mart and that in the month of May, 2013 he was employed in Sohum Shoppe at Jorhat where she stayed with him. She further testified that at the time of her son's birth her sister-in-law, Suchitra Debnath, had eloped and got married and, that, her maternal uncle, Sajal Debnath, had visited her husband's house for the first time on 11/11/13 as her marriage was not acceptable to him.

22. Above admissions elicited by the defence from the otherwise stubborn informant demonstrates the soured relationship between the families on account of her husband's poor economic condition and his volatile future which was being compounded with her elopement despite her family's disagreement. With these admissions defence had attempted to usher in a picture of interestedness on the part of the prosecution witnesses but I beg to differ on this count. In my opinion, these admissions elicited from PW1, Rajashree Dey, do not in any manner taint their testimonies with any degree of animosity but brings to light the attitude and thought-process of conservative families when tied together by the volatile knot of marriage. But what is established is that co-accused Suchitra Debnath was not in the scene since 28/01/11. Therefore, presence of accused Suchitra Debnath at the place of occurrence on 11/11/13 can be very well ruled out.
23. Be that as it may, defence had not denied the social status between PW1, Rajashree Dey, and accused Basu Dey, including the co-accused persons. But what the defence had denied is the allegations of cruelty as alleged by her. In the course of her cross-examination, defence had put suggestions

to Rajashree Dey that she omitted to state to the investigating officer that **"after about three months of her marriage, her husband subjected her to acts of physical cruelty on instigation of the co-accused persons. Her mother-in-law, Dipali Dey, taunted her as she eloped with her son and for not fetching marriage articles with her. As such, after six months of her marriage she requested her father over phone to give her articles such as gold ornaments, furniture, money, etc., after complying with the existing customs. Her parents complied with her requests and gave her furniture, gold chain to her husband, cash amount of Rs.20,000/- (Rs. Twenty thousand only), gold ring, etc. About four to five months thereafter, her husband and mother-in-law again demanded an amount of Rs.50,000/- (Rs. Fifty thousand only) from her, but when she informed them of her father's poor financial condition, her husband struck her violently by means of a table fan inflicting serious injury on her head"** which she stoutly denied.

24. Rajashree Dey denied the suggestion that neither before the investigating officer, nor, in Ext.2 she stated that **"After three years of their marriage she gave birth to a boy child at Dibrugarh Civil hospital but accused Dipali Dey and Suchitra Debnath paid no visit to her. Three days thereafter she along with her infant went to her mother's house at Digboi in the company of her husband and mother. Her husband returned on the same day. After about four days she called her husband over phone on the occasion of her infant's christening but he refused to come. Two months thereafter her husband went to her mother's house to take her back but she refused fearing harassment at the hands of her mother-in-law. As such, he manhandled her there and forcibly brought her back with him. Then, one day after five months of her son's birth, when she was lying unwell in her bed-chamber, accused Dipali Dey and Suchitra Debnath manhandled her and forcibly shoved her into the kitchen. Next morning somehow she**

**and her infant managed to flee to her mother's house where she stayed till the Durga Puja celebrations of 2013. It was during the Durga Puja of 2013 that her husband came to her mother's house beseeching her to return to his fold. She complied to his requests and to the counsel of her parents and accordingly returned that very day to her matrimonial home along with her infant. But, 10 days thereafter accused Dipali Dey made a demand for an amount of Rs.50,000/- (Rs. Fifty thousand only) for business purpose. On 08/11/13 she went to her parents' house leaving her infant with her husband. But on witnessing her father's pitiable condition she informed her inability to her husband over phone. However, her husband remained stout and told her to fetch at least an amount of Rs.10,000/- (Rs. Ten thousand only). The next day, that is, on 09/11/13, she returned to her matrimonial home without any money as demanded. At that, accused Suchitra Debnath remarked to co-accused Dipali Dey that she returned 'empty pocket'. That evening she was brutally tortured by her husband and the co-accused persons and, at about 10:30 PM, her husband kicked her out of the matrimonial home along with her infant".**

25. Rajashree Dey vehemently denied the suggestion that she omitted to state to the investigating officer that "**on 11/11/13 at about 12 o'clock in the noon, her father arrived at her matrimonial home along with her maternal uncle Sajal Debnath. When they inquired her husband about the incident she was physically assaulted by the accused persons in front of their eyes**" and also stoutly denied the suggestion that she had neither stated to the investigating officer, nor, in Ext.2 that "**accused Dipali Dey handed over a kitchen knife to co-accused Basu Dey uttering 'Kill her and I will arrange for your bail'**".

26. In the same breath Sajal Debnath was also confronted with suggestions by the defence and, on his part, he denied of not stating to the investigating officer that "**in the morning of 11/11/13 he received a phone call**

**from informant's father who informed him that she had visited his house about two days ago to fetch money for her husband. However, he could not pay her and on her return she was physically tortured by her husband Basu Dey. That day, on his way to Dibrugarh along with informant's father, the latter told him that his daughter implored him over phone to rescue her from the clutches of the accused persons and that the tortures have become unbearable for her. On their arrival in accused persons' house, he saw a heated argument taking place between the informant and accused Basu Dey".** He also denied of falsely stating that **"Abruptly, accused Basu Dey attacked her with a kitchen knife but the blow fell on his back as he intervened"**.

27. Now, denial of suggestions put forth to a witness by the defence ipso facto do not amount to contradictions, nor, do they adversely affect a witness' testimony in any manner unless the defence leads evidence to that extent. A witness to whom a suggestion is led may deny it as factually untrue but the party leading the suggestion may adduce evidence to demonstrate otherwise.
28. Here, in the case at hand, prosecution is armed with the statement of informant under section 164 of the Cr.P.C. vide Ext.2. But, the version of the defence is that therein Rajashree Dey, had not stated the facts which were suggested to her. A perusal of Ext.2 shows that except her statement that, on 11/11/13, her husband, Basu Dey, attacked her with a kitchen knife but the blow fell on the back of her uncle Sajal Debnath, remaining facts that were suggested to her do not find any place therein. Thus, Ext.2 is corroborative in relation to her present testimonies only to the extent of the allegations revolving around the overt acts of 11/11/13 and not beyond that.
29. The defence had not paused there but went further while cross-examining the investigating officer, that is, Wazidur Rahman, examined as PW4. Wazidur Rahman, during his cross-examination admitted that Rajashree Dey, had not stated to him the facts that were suggested and denied by

her. Wazidur Rahman also admitted that Sajal Debnath, had not stated to him that when he reached the house of accused Basu Dey he saw a heated argument taking place between the accused and Rajashree Dey.

30. Now, in order to bring home the offence under section 498-A of the IPC, prosecution must establish that the victim was subjected to domestic violence, mental or physical, by her husband or his relatives endangering her life, limb and health, or, that she was harassed by her husband and his relatives with a view to coerce her or her relatives to meet any unlawful demand for any property. Here, in the case at hand, as per the allegations, Rajashree Dey was being continually harassed by her husband and the co-accused persons since her marriage so as to force her to satisfy their unlawful demands for dowry and property. Therefore, it is incumbent upon the prosecution to establish the allegations of harassment and the subsequent demand for property to which she was subjected to during the course of her conjugal life.

31. Rajashree Dey had no doubt tendered a vivid and clear picture of her failed married life in her examination-in-chief but the discussion of facts done in the preceding paragraphs demonstrates that the prosecution lacks credible evidence in order to maintain conviction of the accused persons for the offence of cruelty. The reasons for prosecution's failure on this count are as follows:-

- a) ***Firstly***, testimony of Rajashree Dey utterly lacks corroboration in material particulars. Sajal Debnath, spoke mainly of the occurrence that took place on 11/11/13 in the house of accused Basu Dey. But, he spoke nothing of the occurrences, or, of the harassments that took place prior to it.
- b) ***Secondly***, Rajashree Dey deposed of her miseries in the hands of her husband and the co-accused persons in volumes, yet, she omitted to implicate them before the investigating officer during the course of the investigation. Her statement to the investigating officer is her earliest statement, including her FIR, on which credence can be laid on its truth and which would have provided

the prima-facie case under section 498-A of the IPC against the accused persons but her omission to do so had negated it at the very threshold.

- c) ***Thirdly***, vital witnesses such as her parents and uncle, Nripen Debnath, were not examined by the prosecution. However, this non-examination was not deliberate on the part of the prosecution rather case record discloses that their attendance in Court could not be procured despite several attempts being made by it. Order dated- 03/10/18 clearly shows that witnesses Nripen Debnath, Birendra Debnath and Rabindra Debnath were declared not found. Nevertheless, this non-examination of vital witnesses had impeded the prosecution from acquiring important evidence which would have buttressed its version. Testimony of informant's parents and of Nripen Debnath would have ushered in more clarity into its version and would have brought to light the ordeal that she purportedly suffered in the hands of the accused persons within the confines of her matrimonial home. It is on account of this reason for which I opined that the prosecution lacks credible evidence against the accused persons.
- d) ***Lastly***, it follows from the above that in absence of testimony of informant's father, credence cannot be laid on the evidence of Sajal Debnath that he received information over phone from her father that she was being subjected with cruelty on account of her failure to fetch money as demanded by her husband.

32. Therefore, given the discussion done above, I am of the considered opinion, that the prosecution had failed to bring home the offence under section 498-A of the IPC against accused Basu Dey, Dipali Dey and Suchitra Dey beyond all reasonable doubt. As such, accused Basu Dey, Dipali Dey and Suchitra Dey are acquitted of the offence under the section of law mentioned above.

33. Though, acquitted of the offence under section 498-A of the IPC, accused Basu Dey is also prosecuted for offence under section 323 of the IPC for voluntarily causing hurt to Rajashree Dey and Sajal Debnath on 11/11/13.
34. Both Rajashree Dey and Sajal Debnath alleged in their ocular testimonies that, on 11/11/3, accused Basu Dey attacked her with a kitchen knife but the blow fell on the back of Sajal Debnath as he intervened to rescue her. During her cross-examination, Rajashree Dey was not confronted by the defence denying that she was attacked by her husband. Not even a suggestion was led to her to that extent. As regards Sajal Debnath, only a suggestion was led that he had falsely implicated the accused of attacking him, which he stoutly denied as being factually untrue. This suggestion remained uncharted and no amount of evidence was adduced by the defence to establish it.
35. Thus, use of criminal force on Rajashree Dey and Sajal Debnath by accused Basu Dey is apparent on the face of the record. In addition to it, prosecution had also proved the injury reports of Rajashree Dey and Sajal Debnath vide Ext.5 and Ext.7 respectively. Here, however, the medical officer concerned was not examined. But, nevertheless, the injury reports were prepared by a Government Medical Officer of Dibrugarh State Dispensary in his capacity as a public officer. As such, both Ext.5 and Ext.7 are "***public document***" within the meaning of section 74 of the Indian Evidence Act, 1872. Furthermore, copies thereof were already furnished to the accused for his notice. As such, in my opinion, consideration of Ext.5 and Ext.7 will not cause any prejudice to the accused person.
36. Now, Ext.5 demonstrates no external injuries on Rajashree Dey and carries no definite opinion. On the other hand, as per Ext.7 Sajal Debnath suffered lacerated injury measuring 1/4 cm X 1/4 cm X 1/8 cm on his left scapular on upper and outer side with clotting of blood. The injury was simple in nature and caused by blunt object. Sajal Debnath was escorted by Woman Constable (WC) Rumi Gogoi of Gabharupathar Outpost. He was examined on 11/11/13 at 02:00 PM and the report carries a further opinion that the age of the injury was within six hours.

37. Thus, the injury report mentioned above clearly shows that Sajal Debnath did suffer injury on his person on 11/11/13. Besides, said injury was simple in nature. In addition to it, his testimony and that of Rajashree Dey that accused Basu Dey attacked her with a kitchen knife but the blow fell on Sajal Debnath remained stout and unblemished. Their testimonies demonstrates that accused Basu Dey voluntarily attacked Rajashree Dey but due to the timely intervention of Sajal Debnath, she was spared of the mortal blow. Instead, Sajal Debnath bore the brunt of the blunt side of the kitchen knife. Overt acts of Basu Dey establishes that he intended to cause hurt to Rajashree Dey. Even if hurt was eventually caused to Sajal Debnath, that does not absolve Basu Dey of the offence under section 323 of the IPC. His blameworthy intention to cause hurt was clear and apparent and there was a clear and apparent danger to both victims.
38. As regards Rajashree Dey, I am fairly convinced that accused Basu Dey used criminal force on her. Though, prosecuted under section 323 of the IPC, yet by application of section 222 of the Cr.P.C., accused Basu Dey can be convicted under section 352 of the IPC. Section 222 of the Cr.P.C. provides that when an accused is charged with a major offence and the said charge is not proved, he may be convicted of the minor offence though he was not charged with it.
39. Here, in this case, by being charged under section 323 of the I.P.C., accused Basu Dey had notice of all the circumstances going to constitute the minor offence, namely, the offence under section 352 of the I.P.C., of which he may be convicted. But no attempt was made by the defence to confront the prosecution case in this respect. In my opinion, the offences under sections 323 and 352 of the I.P.C. are cognate offences, wherein the main ingredients are common.
40. But the defence was not out of wits. It conjured up two supposed instances that purportedly tore the prosecution version asunder. ***Firstly***, that the prosecution lacks independent witnesses and the sole independent witness, namely, Krishna Das had not at all supported the prosecution case. And, ***secondly***, discrepancies in the evidence of Rajashree Dey and Sajal

Debnath to the extent that they filed FIR at Gabharupathar Outpost instead of at Borbari Outpost.

41. In my opinion, these two instances pointed out by the defence are unfounded and do not adversely affect the prosecution in any manner. ***Firstly***, because Krishna Das is a neighbor of accused Basu Dey and her testimony was recorded after a long gap of five years from the date of the occurrence. Therefore, being a neighbor there is every likelihood of being influenced to the benefit of the accused. And, ***secondly***, the discrepancies pointed out in the testimonies of Rajashree Dey and Sajal Debnath are groundless. Testimony of the investigating officer clears the air about it when he deposed that the victims had first been to Gabharupathar Outpost, where their medical examination was done, and from there they were forwarded to Borbari Outpost as the place of occurrence fell within its jurisdiction.
42. As such, I entertain no doubt on the prosecution version and to cut a long story short, accused Basu Dey is found guilty for using criminal force on Rajashree Dey and for voluntarily causing hurt to Sajal Debnath. Thus, it can be safely concluded that on the date of the offence, that is, on 11/11/13, accused Basu Dey committed offences under section 352 of IPC and section 323 of IPC.
43. The points for determination are decided accordingly.

**ORDER**

44. As such, from the observation and discussion done hereinbefore, I arrive at the conclusion that the prosecution had failed to establish the allegations against accused Basu Dey, Dipali Dey and Suchitra Debnath for the offence under section 498-A of the IPC beyond all reasonable doubt. As such, the accused are acquitted of the offences under the section of law indicated above.
45. However, without question, prosecution established that, on 11/11/13, accused Basu Dey committed offences under sections 352 of IPC and 323

of IPC. Accordingly, Basu Dey is found guilty under sections 352/323 of the IPC and is convicted thereunder.

46. Now, section 352 of the IPC entails punishment with imprisonment of either description for a term which may extend to three months, or with fine which may extend to Rs.500/- (Rs. Five hundred only), or with both. On the other hand, section 323 of the IPC prescribes imprisonment, either simple or rigorous, for a term which may extend to one year, or with fine which may extend to Rs.1000/- (Rs. One thousand only), or with both.
47. Perusal of case record discloses that since his appearance on 22/01/14, convict had been regularly appearing in the Court proceedings. Further, on 20/02/19 when his statement under section 313 of the Cr.P.C. was recorded he was 38 years of age. Thus, as on the date of the crime, that is, on 11/11/13, he was approximately 32 years of age. Besides, there is no record of any previous conviction. As such, considering the circumstances of the case and young age of the convict, benefits of section 3 of the Probation of Offenders Act, 1958 can be extended to him.
48. Accordingly, convict Basu Dey is admonished and is allowed to go. However, in accordance with section 5 of the Probation of Offenders Act, 1958 convict Basu Dey is directed to pay compensation of Rs.4000/- (Rs. Four thousand only) which shall be paid to the victims, namely, Rajashree Dey and Sajal Debnath, in equal proportions.
49. Liability of the surety stands discharged. Copy of the judgment be furnished free of cost to the convict.
50. Instant case is disposed of on contest.

Given under my hand and Seal of the Court this 4<sup>th</sup> day of May, 2019.

Typed and corrected by me and every page bears my signature.

Judicial Magistrate First Class,  
Dibrugarh.

**THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, DIBRUGARH**  
**G.R. CASE NO.- 3309/2013**  
**APPENDIX**

- 1) Prosecution exhibits:-
  - Ext.1:- FIR
  - Ext.1(1):- Signature of Rajashree Dey
  - Ext.2:- Statement of Rajashree Dey u/s 164 of the Cr.P.C.
  - Ext.2(1):- Signature of Rajashree Dey
  - Ext.3:- Seizure list
  - Ext.3(1):- Signature of Sajal Debnath
  - Ext.3(2):- Signature of Wazidur Rahman
  - Ext.4:- Sketch map
  - Ext.4(1):- Signature of Wazidur Rahman
  - Ext.5:- Injury report
  - Ext.6:- Charge-sheet
  - Ext.6(1):- Signature of Wazidur Rahman
  - Ext.7:- Injury report
- 2) Prosecution witnesses:-
  - PW1:- Rajashree Dey
  - PW2:- Sajal Debnath
  - PW3:- Krishna Das
  - PW4:- Wazidur Rahman
- 3) Defence exhibits.- NIL
- 4) Defence witnesses.- NONE

Judicial Magistrate First Class,  
Dibrugarh.