

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS

GR 2869/2016

Under Section 498(A) of the Indian Penal Code

The State of Assam

Versus

Sri Thanu Handique

.... Accused Person

R/O- Bordubi, Kalibari Road,
Dibrugarh

Present: Rinku Boro, AJS

Advocate appearing for the State : Learned APP Sri L. Deori

Advocate appearing for the Accused persons: Learned Advocate Sri

Chandan Cheita and Smti
Rekhamoni Hazarika

Dates of recording Evidence : 04.08.2018

Date of hearing Argument : 25.11.2021

Date of delivering Judgment : 04.12.2021

JUDGMENT

CASE OF THE PROSECUTION:

1. The prosecution briefly narrated that the informant/ complainant made a written complaint alleging; about two and half years ago she met the accused person namely, Sri Thanu Handique and she developed love relations with him and thereafter, they got married. After about two months of their marriage her husband subjected her with physical and mental tortured and also demanded dowry form her. Due to frequent quarrel and fights with her husband she lodged a complaint at Duliajan women police station but at the women police station Duliajan they resolved their disputes and decided not to quarrel with each other anymore and also perform court marriage. However, after a few days her husband again subjected her to various physical and mental torture on her and also threatened her with dire consequence, thereafter, she left her matrimonial house finding difficult to stay with her husband. Later on, after reaching her parents house and discussing with her mother she lodged an FIR against her husband.

ALLEGATIONS and INVESTIGATION:

2. On receipt of the FIR, the Officer-in-charge of Duliajan police station registered a case being Duliajan P.S. Case No. 373/2016 under Sections 498(A)/506 of Indian Penal Code against the accused person namely, Sri Thanu Handique. The investigating officer A.S.I Mohan Changmai carried out the investigation in the matter. During the course of

investigation, the IO examined the witnesses u/s section 161 Cr.P.C, prepared one sketch map of the place where the offence was allegedly committed and then after completion of the investigation finally submitted charge-sheet finding sufficient materials against the accused person namely Sri Thanu Handique U/s 498(A) of IPC.

CHARGE AND OFFENCE EXPLANATION:

3. On issuance of process, as per Section 204 (1) (b) accused person were called upon to enter trial and copies of all the relevant documents u/s Section 173 was furnished to the accused person in compliance with Section 207 Cr.P.C. Upon hearing and on perusal of case records and hearing both the sides cognizance of the alleged offence under Section 498(A) of the Indian Penal Code was taken and accordingly offences under Section 498(A) of IPC was framed and which was also read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. Thereafter summons was issued to the prosecution witnesses.

TRIAL

4. During the trial of the case, the prosecution side examined 1 (one) prosecution witnesses and 1(one) Exhibit in this case. The other prosecution witnesses could not be examined as their appearance could not be procured even after repeated attempts as they could not be located from the mentioned address. Accordingly, at the request of the learned APP, the prosecution evidence was closed. The examination of the accused person under section 313 of Cr.P.C. has been dispensed with finding no any incrementing materials against the accused person. The defence did not adduce any evidence.

POINTS FOR DETERMINATION:

5. I have heard the learned counsel for the accused and learned assistant public prosecutor for the state. Having heard both sides and after perusing the materials on record, the following point for determination is framed for the just decision of the case: -

- I. Whether the accused person being the husband of the informant since after solemnization of marriage under Duliajan P.S. subjected the informant to cruelty and drove her out of the matrimonial house on 30.09.2016 and thereby committed an offence punishable under Section 498(A) the Indian Penal Code?

DECISION AND REASONS THERE OF:

6. I have heard the argument from both sides.

7. PW1 Smti Pubali Phukan deposed and stated in her examination-in-chief that the accused person Sri Thanu Handique is her husband. Their marriage took place on 22.06.2014 after they fell in love. Thereafter, she stayed at her husband's house. Her mother-in-law informed her that her husband was already a married person. Even then she stayed with her husband. Thereafter, her husband stopped her from communicating with her parents. Her husband used to asked money and used to utter bad things about her sister and her brother. After drinking alcohol her husband used to quarrel with her. Even after five months of their elopement their social marriage did not took place. She was kept in the backyard of her husband's house made of thatched house which had no doors. She used to dine with her husband and family. One day she could not bear the troubles at her husband's house and informed her mother

about her conditions. Thereafter, she lodged a complaint at women cell at Duliajan PS but later on, mutually settled their dispute at the instance of police personal at women cell, Duliajan PS and performed court marriage. Thereafter, she stayed at a rented house at Naharkatia. But as her husband's father health deteriorated she went back with her husband at her husband's place. Later her husband stopped her education and thereafter, she returned to her parent's house and lodged a complaint against her husband. Exhibit 1 is the Ejahar and Exhibit 1(1) is her signature.

8. In her cross-examination PW1 Smti Pubali Phukan stated that her husband's house is at Bordubi in Tinsukia District. Her husband did not have any children from his first marriage. Her husband's first wife house was at Duliajan but she did not know where does she stay. She did not know if the first wife lodged a maintenance case against her husband. Her husband's first wife stayed for around six to seven months. She did not saw her husband's first wife. The first wife family member did not used to visit her husband's house. She also stated that she stayed for around six months with her husband. She did not got social recognition as a wife. She do not posses any photograph of sindoor applying on her forehead. There was no social rights and customs followed after her elopement. She stated that she returned her husband's house on her own will. She also stated that she had not done any health check-up till from lodging of the case till filling of the charge-sheet. She did not stayed at any hospital. Her husband did not assault her physically and asked money from her. Their parents did not communicate with each other. She also stated that she did not submitted certificate of court marriage in the Court. She also stated that before the I/O she has not

mentioned that her husband had asked money from her. After lodging of the FIR she signed on divorce paper and made an agreement that she want lodged any case against her husband and they would stay separately. She denied the fact that as her husband was already married person she could not stopped herself from lodging the FIR.

ANALYSIS OF EVIDENCE:

9. On perusal of her examination in chief by the P.W.-1 Smti Pubali Phukan it is seen that after meeting the accused person, the informant and the accused person developed love affair and subsequently the informant eloped with the accused person but she did not elaborate details of her marriage with accused person even though she stated that she got marriage on 22.06.2014 with the accused person and started staying at his house. She also stated that her husband did not allow her to communicate with her family members and used to ask money from her but she did not mentioned any amount of money she was asked by the accused person nor did she narrated any particular instances wherein she had given money to the accused person. She also stated that the accused person use to say bad things about her brother and sister and after drinking alcohol use to quarrel with her but she never mentioned any particular instances of quarrel. She herself admitted that there was no social marriage between the accused person even after five months of her stay with the accused person. She also stated that she was made to stay at a separate thatched house and finding difficult to adjust she climbed the boundary wall and ran away and later on reaching her parents house see informed her mother and later, she filed a case at the women police station, Duliajan which was settled between them amicably and she claimed that thereafter she performed court

marriage with the accused person. But she admitted the fact that she did not give any documentary proof regarding the court marriage. She claimed, after the court marriage she stayed in a rented house at Naharkatia but as her husband's father health deteriorated she went to stay at her husband's house again. Thereafter, her studies were stopped by the accused person due to which she returned to her parents house on her own will and later filed the FIR against the accused person.

10. During her cross-examination also she admitted that she was not given social recognition of her marriage with the accused person. Moreover she also stated that she never had to visit hospital and her husband did not ask money from her and there was no communication between her parents and her husband's parents. She also admitted that as claimed by her she could not submit any certificate of the court marriage. She also stated that she had signed on divorce paper and there was also agreement between her and the accused person that they would stay separately and she would not file any case against him.

11. *The cruelty within the meaning of Section 498A IPC has been explained in the explanation to Section 498A. It consists of two clauses namely clause (a) and (b). To attract Section 498A IPC., It must be established that the cruelty or harassment to wife was to force her to cause grave bodily injury to herself or to commit suicide, or harassment was to compel her to fulfill your illegal demand for dowry. It is not every type of harassment or cruelty that would attract Section 498A, IPC.*

Cruelty can be either mental or physical. It is difficult to straightjacket to term cruelty by means of a definition, because cruelty is a relative term. What constitutes cruelty for one may not be considered cruelty for another person G.V. Siddaramesh v. State of Karnataka (2010) 3 SCC 152

In the case of Rupali Devi v State of Uttar Pradesh and Ors, (2019) 5 SCC 384 Hon'ble Supreme

Court held that: "Cruelty" which is the crux of the offence under Section 498A IPC is defined in Black's Law Dictionary to mean "The intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (Abuse, inhuman treatment, indignity)". Cruelty can be both physical or mental cruelty. The impact on the mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being ill treated are aspects that cannot be ignored while understanding the meaning of the expression "cruelty" appearing in Section 498A of the Indian Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatize the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress caused by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Mental

cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place.

Cruelty under Section 13 (1) (ia) of the Hindu Marriage Act talks about the behaviour of one spouse towards the other which results in a reasonable apprehension in the mind of the latter that it is not safe for him or her to continue to stay in the matrimonial relationship anymore with the other.

12. Thus, upon careful perusal of the evidence adduced by the complainant/ informant it is doubtful whether the accused person actually married the informant or not. The complainant/informant though stated that she got married with the accused person but it has been proved that there was no social marriage between them. There were no instances of cruelty by the accused person as claimed by the complainant/informant. The complainant did not narrated specific instances of physical or mental abuse and torture on the contrary the complainant in her cross-examination herself admitted that the accused person did not assaulted her and she had never gone for medical check-up or visited any hospital. There was also no record for demand of dowry.

13. In view of the above discussion on the evidence on record and the discrepancies as pointed out, I have come to the conclusion that the evidence of witness failed to disclose the material ingredients of "Cruelty" as defined in Explanation (a) and (b) to Section 498A IPC. The issue is thus decided in negative for the prosecution.

"It is the fundamental principle of criminal jurisprudence that when an accused is put up for trial, the burden to prove the offence to the hilt by legal and cogent evidence remains on the prosecution which never shifts. Only in exceptional cases where a special defence or plea is raised by the accused, the burden is discharged by him either by leading evidence or by demonstrating from the record that such defence is made out".

14. Upon perusal of the evidence on record and in light of the various inconsistencies and inadequacies in the prosecution case, the Court is of the conclusion that prosecution has failed to establish its case U/s 498(A) of IPC against the accused person namely Sri Thanu Handique.

15. Thus, considering all aspects, evidence adduced and materials on record I do not find any ingredients of the offences which attract the provisions of the Section 498(A) of the Indian Penal Code and accordingly it cannot be proved that the accused person namely, Sri Thanu Handique is not guilty of the said charges.

16. From the above discussion and examination of witness, it can be summarised that the prosecution has failed to prove the commission of offences under Section 498(A) of the Indian Penal Code against Sri Thanu Handique.

ORDER

17. In view of the discussion made above and the decisions reached in the foregoing point for determination, it is held that the prosecution has failed to prove beyond reasonable doubt that the accused person namely Sri Thanu Handique had committed the offence under Section 498(A) of the Indian Penal Code as alleged.

18. As such the accused person namely, Sri Thanu Handique is acquitted of the charge under Section 498(A) of the Indian Penal Code and he is set at liberty forthwith.

19. The bail bond of the accused person shall remain valid for six months from today as per section 437 of the Cr.P.C.

20. Pronounced by me on this open Court, this 04th day of December, 2021 under my hand and seal of this Court.

(Rinku Boro)
Judicial Magistrate First Class

APPENDIX

Prosecution Witness

PW1 – Smti Pubali Phukan

Prosecution Exhibits

Exhibit 1 - FIR

Exhibit 1 (1) - Signature of the Informant Smti Pubali Phukan

Defence Witness

Nil

Defence Exhibits

Nil

(Rinku Boro)

Judicial Magistrate First Class