

**IN THE COURT OF THE CHIEF JUDICIAL
MAGISTRATE, DIBRUGARH :: ASSAM.**

G.R. Case No. 1993/2018 (PRC 118/2019)

U/s 498(A)/34 IPC

State of Assam

-Vs-

1.Sri Biswajit Nayak

2. Sri Bimala Nayak and

3. Smti. Anushree Nayak

.....Accused Persons.

PRESENT : Smti. Rani Boro
Chief Judicial Magistrate,
Dibrugarh.

APPEARANCE :

Advocate for the Prosecution : Smti. D. Gogoi
A.P.P

Advocate for the Defence : Sumit Kumar Todi

Date of evidence : 19.06.2019
24.09.2021

Date of argument : 29.11.2021

Date of judgement : 13.12.2021.

J U D G M E N T

1. The case of the prosecution in brief is that on 11.06.2018 at about 7.30 pm the informant Sri Ranjit Mirdha lodged an FIR before the Mohanbari Police Outpost stating that his daughter Smti Rima

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Mirdha Nayak was physically and mentally tortured by her accused husband and his family members as she did not obey to her husband's orders to chop off wood. The informant has further stated that her daughter informed him that she has been physically assaulted and mentally tortured from before. The informant in this regard has lodged an FIR.

2. On the basis of the FIR lodged by the informant, a case, being Lahoal P.S Case No. 81 of 2018, was registered under Section 498(A) IPC. SI Ajit Borah was entrusted with the investigation of this case who conducted investigation into the case and filed charge-sheet against the accused persons namely Sri Biswajit Nayak, Sri Bimala Nayak and Smti. Anushree Nayak under section 498(A)/34 IPC.
3. Case record after charge sheet was kept in the file of this Court for disposal on 02.02.2019. Summons was issued to the accused. The accused appeared in this case. Copy was furnished to them under section 207 Cr PC. Considering the material on record and on hearing both sides, charge under section 498(A)/34 IPC was explained to the accused to which they pleaded not guilty and claimed to be tried.

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4. During the trial of the case, the prosecution side examined only 7 (seven) P.Ws in this case. Thereafter, the accused were examined under section 313 Cr PC. The accused denied the incriminating materials against them and declined to adduce evidence on their behalf. Defence evidence was closed. Judgment is accordingly, prepared after hearing the arguments of both sides.
5. I have heard the learned counsel for the accused and learned A.P.P for the State. Having heard both sides and after perusing the materials and evidence on record, the following point arise for determination in this case.

6. **POINTS FOR DETERMINATION :-**

- i. Whether on 11.06.2018 at about 7.30 pm the accused persons in furtherance of their common intention being the husband and the family members of the informant subjected her to cruelty both mentally and physically which is of such a nature as is likely to drive her to commit suicide or to cause grave injury or danger to life, limb or health and thereby committed an offence punishable U/s 498(A)/34 IPC?

DECISION AND REASONS FOR THE

DECISION :-

7. PW 1 in his evidence has deposed that he is the complainant of this case. The accused persons are her son-in-law and his family members. On 11.06.2018, the accused persons assaulted his daughter namely Rima Mirdha in the house of the accused. As a result of such assault, she sustained injury on her left hand and blood was oozing from her mouth. His daughter had to stay in the hospital for four days for her treatment. He could know about the incident, from his daughter. Then he lodged one FIR in the police station. Ext.1 is the FIR. Ext.1(1) is his signature. Earlier, also he filed cases against the accused persons regarding the similar matter of torture by the accused against his daughter, but police compromised the matter earlier.

During cross-examination PW 1 deposed that the accused Biswajit Nayak also filed case against him and his son and in that case, he is appearing as accused. He filed this case after the filing of the case by the accused. PW 1 has denied the fact that the accused did not assault his daughter and in reality they assaulted the accused and for such assault by the accused his daughter did not sustain any injury. Earlier he agreed to

compromise the case with the accused but later on declined to do the same for his daughter. PW 1 has denied the fact that as my daughter did not want to stay in the house of the accused, he filed false case against the accused. PW 1 has denied the fact that he did not state before police what he has deposed in the court. He did not see the occurrence of incident.

8. PW 2 has deposed in her evidence that the complainant is her father. The accused is her husband and his family members. On 11.06.2018, the accused persons assaulted her in their house and then her father lodged this case. The accused earlier also tortured her on minor matter like cutting of wood etc. Ext.2 is her statement U/s 164 CrPC. Ext.2(1), 2(2) and 2(3) are her signature.

During cross-examination PW 2 deposed that she had relation of love affairs with the accused and therefore she fled away with him. In the house of the accused his parents, his elder brother, the wife of the elder brother, his brother in laws and two sisters resides together. The name of the sister in law of her husband is Sima Rai. PW 2 has denied the fact that on 11.06.2018, the accused persons did not assault her. PW 2

has denied the fact that she did not want to stay in the joint family of the accused and hence she left the house of the accused. PW 2 has denied the fact that when the accused came to take her back, they assaulted the accused. PW 2 has denied the fact that she did not state before police what she deposed in the court. She has no faith upon the accused persons and hence therefore she does not compromise the case. The houses of Kiran Karmakar, Ratan Rajowar and others are situated near the house of the accused.

9. PW 3 in his evidence has deposed that the complainant is his father. The accused persons is the husband of his sister and her sister-in-law and her mother-in-law. The accused persons assaulted and tortured his sister in their house. Earlier also cases were filed in the police station against the accused persons for torturing his sister, but police compromised the matter between the parties at the police station. Later on, this case was filed for assaulting his sister on 11.06.2018.

During cross-examination PW 3 has deposed that the accused Biswajit Nayak filed one case against him and his father, in which he is appearing as accused. They filed this case after the filing of the case by the

accused. He did not see the occurrence of the incident. PW 3 has denied the fact that he has deposed falsely that the accused assaulted his sister. PW 3 has denied the fact that they filed false case to get rid of the case filed by accused. PW 3 has denied the fact that they assaulted the accused when the accused came to take back his sister. PW 3 has denied the fact that he did not state before police what he deposed in the court.

- 10.** PW 4 has deposed in his evidence that the complainant is his uncle. He knows the accused persons. The daughter of the complainant was assaulted by the accused in their house and then she returned to the house of the complainant and she had to undergo treatment in the hospital.

During cross-examination PW 4 has deposed that he did not see the occurrence of the incident. Earlier also the daughter of the complainant fled away from the house of the accused. Police did not record his statement.

- 11.** PW 5 has deposed in his evidence that he knows the complainant as well as the accused. He heard from the family members of the accused that some altercation took place between the accused and his wife Rima.

During cross-examination PW 5 denied the fact that he did not hear from the family members of the accused that some altercation took place between the accused and his wife namely Rima. Police did not record his statement.

- 12.** PW 6 has deposed in her evidence that she knows the complainant as well as the accused persons. About 6-7 months ago, she heard some hue and cry in the house of the accused and when she went there she saw a quarrel took place between the accused and his wife. Then she separated both the parties from doing so.

During cross-examination PW 6 deposed that Police did not record her statement, hence she could not tell the police what she has deposed in the Court.

- 13.** PW 7 has deposed in his evidence that on 11.06.2018 he was posted as I/c of Mohabari Police outpost. On that day one Ranjit Mirdha lodged an FIR and on that FIR G.D Entry no 208 dated 11.06.2018 was submitted to Lahoal P.S for registration. He recorded the statement of the complainant. During investigation he visited the place of occurrence on 12.06.2018. He conducted inquiry upon the witnesses and recorded their

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statements. He recorded the statement of the victim U/s 161 CrPC. The statement of the victim was recorded U/s 164 CrPC. The victim was sent for medical examination and then she was sent to her home as per the order of the Court. The accused persons were served with notice to appear before him and the accused duly appeared on receiving the notice. The name of the accused are Biswajit Nayak, Smti. Bimala Nayak and Anushree Nayak. He recorded the statement of the accused and allowed them to go on police bail. They denied all the allegations raised on them. He conducted his investigation on the witnesses and found that the victim after 6 months of her marriage she was harassed both physically and mentally, tortured her and drove her out of the house. He then filed charge sheet against the accused husband, accused mother in law and accused sister in law U/s 498(A)/34 IPC. The sketch map is Exhibited as Exhibit 3 and his signature as Exhibit 3(1), Exhibit 4 medical report, Exhibit 5 is the charge sheet and Exhibit 5(1) is his signature.

During cross-examination PW 7 has deposed that before lodging of the FIR/ejahaar they were not informed about the incident of

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this case and they have not tagged any documents along with the charge sheet. The victim of this case on 15.06.2018 was sent for medical examination on the date of the incident 11.06.2018. The 164 CrPC statement of the victim was recorded on 19.06.2018. When he started the investigation the victim was at her parental home. On 15.06.2018 he recorded the 161 CrPC statement of the victim. On receipt of information the medical examination of the victim and the recording of the 161 CrPC statement was not done immediately as the information was received at night. From the report of the Doctor it was seen that no abnormality or injury was found. PW 1 Ranjit Mirdha has not deposed in the 161 CrPC statement that for 4 days the victim was medically treated before the Police. There was injury in the left hand and there was bleeding from the mouth of the victim. PW 1 only deposed before the police that the victim had undergone medical treatment. PW 7 has denied the fact that he has not investigated the case properly. PW 7 has denied the fact that there are no incriminating materials U/s 498(A) IPC against the accused persons.

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9. From the evidence of the 7 (seven) prosecution witnesses, it appears that the vital witness in this case is PW2. She deposed that accused is her husband and his family members. On 11.06.2018, she was assaulted by the accused persons in their house after which, her father lodged this case. Earlier also, she was tortured for a small issue of cutting wood. There is no more detailed in her evidence regarding injury sustained by her. PW1 is her father. According to him, his daughter was assaulted on 11/06/2018. She sustained injury on her left hand and blood was oozing out from her mouth. His daughter stayed in the hospital for four days. He could know about the incident from his daughter. PW3 who is the brother of PW2 and son of PW1 deposed that accused is the husband/sister in law/mother in law of PW2. They tortured his sister in their house. Earlier also, cases were lodged, but police compromised the matter. Later again, this case was filed for assaulting his sister on 11/06/2018. Other witnesses of this case PW4 deposed to the effect that daughter of the complainant was assaulted by the accused in their house. She returned to the house of the complainant after undergoing treatment in the hospital. PW5 and PW6 had only heard altercation and quarrel between the parties and there is no

evidence about any torture or assault on PW2 by the accused persons in their evidence.

- 10.** The allegation in this case is under section 498A/34 IPC against the three accused persons, who are the husband of PW2, sister in law and mother in law of PW2. In the FIR, it is alleged that since marriage, the daughter of the informant was beaten by the accused Biswajit Nayak. On 11/06/2018, his daughter was dragged and beaten for refusal to cut fire wood. On this allegation, if the evidence is looked into, it is found that the incident is of only 11/06/2018. There is no allegation of any dowry demand or unlawful demand or any harassment so as to cause danger to life, limb or property of the victim PW2. Her father PW1, her brother PW3 and other witnesses are all speaking about one single date of 11/06/2018. The incident which happened on 11/06/2018 is not one under section 498A/34 IPC that there was any unlawful demand on that day and for non-fulfilment of that demand victim was assaulted or beaten by the accused. There is no medical evidence in this case. However, I/O PW7 has deposed clearly that the victim was sent for medical examination on 15/06/2018 and the incident is of 11/06/2018. He has also stated that the Doctor in his report has found no abnormality or injury on the victim PW2. Thus, there are

discrepancies in the evidence of PW1, PW2 and PW7 and if PW7 is to be believe then evidence of PW1 and PW2 will have to be definitely fall short about the fact that the victim sustained injury on 11.06.2018. The victim was examined after four days of the incident and no injury was found on her person when she was sent for medical examination. The version of PW1 therefore, which is not even deposed by PW2 that she stated four days in the hospital is not trustworthy or believable.

- 11.** From the evidence, it is very clear that the allegations of 498A/34 IPC are not a continuing one. In this case, earlier also some cases were lodged between the parties which were compromised in the police station. These facts and also of the fact dated 11.06.2018 is more in nature of normal wear and tear of family life rather than the case under section 498A/34 IPC. It is also in the evidence on record that the case was also been lodged by the accused person on PW1 and PW3 over an allegation that they have assaulted the accused when the accused visited the house of PW2 to bring her back. The evidence therefore is not sufficient to prove that the accused persons in furtherance of their common intention on 11/06/2018 or prior to that had meet out cruelty either physically or mentally

or any unlawful demand or her failure to meet such demand.

- 12.** From the evidence of the 7 (seven) prosecution witnesses, it appears that the vital witness in this case is PW2. She deposed that accused is her husband and his family members. On 11.06.2018, she was assaulted by the accused persons in their house after which, her father lodged this case. Earlier also, she was tortured for a small issue of cutting wood. There is no more detailed in her evidence regarding injury sustained by her. PW1 is her father. According to him, his daughter was assaulted on 11/06/2018. She sustained injury on her left hand and blood was oozing out from her mouth. His daughter stated in the hospital for four days. He could know about the incident from his daughter. PW3 who is the brother of PW2 and son of PW1 deposed that accused is the husband/sister in law/mother in law of PW2. They tortured his sister in their house. Earlier also, cases were lodged, but police compromised the matter. Later again, this case was filed for assaulting his sister on 11/06/2018. Other witnesses of this case PW4 deposed to the effect that daughter of the complainant was assaulted by the accused in their house. She returned to the house of the complainant after undergoing treatment in the hospital. PW5 and PW6 had only heard altercation

and quarrel between the parties and there is no evidence about any torture or assault on PW2 by the accused persons in their evidence.

- 13.** The allegation in this case is under section 498A/34 IPC against the three accused persons, who are the husband of PW2, sister in law and mother in law of PW2. In the FIR, it is alleged that since marriage, the daughter of the informant was beaten by the accused Biswajit Nayak. On 11/06/2018, his daughter was dragged and beaten for refusal to cut fire wood. On this allegation, if the evidence is looked into, it is found that the incident is of only 11/06/2018. There is no allegation of any dowry demand or unlawful demand or any harassment so as to cause danger to life, limb or property of the victim PW2. Her father PW1, her brother PW3 and other witnesses are all speaking about one single date of 11/06/2018. The incident which happened on 11/06/2018 is not one under section 498A/34 IPC that there was any unlawful demand on that day and for non-fulfilment of that demand victim was assaulted or beaten by the accused. There is no medical evidence in this case. However, I/O PW7 has deposed clearly that the victim was sent for medical examination on 15/06/2018 and the incident is of 11/06/2018. He has also stated that the Doctor in his report has found no abnormality or injury on the victim PW2. Thus, there are

discrepancies in the evidence of PW1, PW2 and PW7 and if PW7 is to be believe then evidence of PW1 and PW2 will have to be definitely fall short about the fact that the victim sustained injury on 11.06.2018. The victim was examined after four days of the incident and no injury was found on her person when she was sent for medical examination. The version of PW1 therefore, which is not even deposed by PW2 that she stated four days in the hospital is not trustworthy or believable.

- 14.** From the evidence, it is very clear that the allegations of 498A/34 IPC are not a continuing one. In this case, earlier also some cases were lodged between the parties which were compromised in the police station. These facts and also of the fact dated 11.06.2018 is more in nature of normal wear and tear of family life rather than the case under section 498A/34 IPC. It is also in the evidence on record that the case was also been lodged by the accused person on PW1 and PW3 over an allegation that they have assaulted the accused when the accused visited the house of PW2 to bring her back. The evidence therefore is not sufficient to prove that the accused persons in furtherance of their common intention on 11/06/2018 or prior to that had meet out cruelty either physically or mentally

or any unlawful demand or her failure to meet such demand.

ORDER

In the light of the above discussions, the accused **1.Sri Biswajit Nayak, 2. Sri Bimala Nayak and 3. Smti. Anushree Nayak** are acquitted of offence U/s 498(A)/34 IPC and set at liberty forthwith as prosecution failed to prove its case beyond reasonable doubt.

The bail bonds shall remain in force for 6 (six) months from today.

Judgment is prepared in separate sheets and tagged with the case record.

Given under my hand and seal of this court on this **13th day of December, 2021.**

(Smti Rani Boro)
Chief Judicial Magistrate,
Dibrugarh

Appendix

Prosecution Witness :-

PW1 :- Ranjit Mirdha

PW2 :- Rima Mirdha Nayak

PW3 :- Amrit Mirdha

PW4 :- Rupesh Karmakar

PW5 :- Ratan Rajuwar

PW6 :-Kiran Karmakar

PW7 :- Retired Ajit Bora

Defence witness :-

None

Exhibits :-

Prosecution exhibits :-

Exhibit 1: FIR

Exhibit 2: Statement of the victim U/s 161 CrPC.

Exhibit 3: Sketch Map

Exhibit 4: Medical report.

Exhibit 5: Charge sheet.

Defence exhibits : -

None

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Court witness :- None.

Court exhibits :- None.

CJM, Dibrugarh