

IN THE COURT OF THE SESSIONS JUDGE ::::::::::: DHUBRI

C.A. No.4 (2)/ 2012

Appellant : Md. Kohinur Ali

- Vs -

Respondent : State of Assam
Represented by the P.P, Dhubri

Present : Sri A. Bhattacharyya, AJS
Sessions Judge, Dhubri

Sri Joynal Abedin, Advocate for appellant.

Sri M. Zaman learned P.P. respondent for the State of Assam

Date of Hearing : 13-05-2013

Date of Judgment : 21-05-2013

J U D G M E N T

This criminal appeal is projected against the Judgment and order of conviction recorded by the Sub-Divisional Judicial Magistrate (M), Bilasipara in G.R. (BLP) Case No.106/2009 whereby the appellant Kohinur Ali was convicted U/s.498 (A) of I.P.C. and directed to suffer one year R.I. and to pay fine of Rs.2,000/- i/d to suffer one month S.I.

2. Being aggrieved and dissatisfied with the aforesaid judgment, the accused-convict assailed the impugned judgment on a numbers of grounds, which are narrated in the memo of appeal.

3. During hearing, L.C.R. is called for also the learned counsel of the appellant as well as learned public prosecutor are heard.

4. Now, I propose to narrate the background story as has ben revealed during hearing of the appeal in question.

5. On 15-08-2008 Sahina Begum was married to one Kohinur Ali. After two months of the marriage, Kohinur Ali placed the demand of Rs.10,000/- along with furniture and started to harass her. Finally on 20-01-2009, the accused Kohinur again placed demand of Rs.10,000/- along with cycle, radio and on her failure, drove her out from the matrimonial home. As regards the aforesaid aspect village salish had also taken place. Thus the occasion of filing of ejahar before the police.

6. The Bilasipara Police Station registered a case on the basis of the said ejahar and took up the investigation and at the conclusion of investigation laid the charge sheet U/s.498 (A)/34 I.P.C. against the appellant alongwith two others.

6. On the appearance of the accused persons the charge there under was framed. The charge so framed was read over and explained to the accuseds to which they pleaded not guilty.

7. During trial the prosecution side after examining as many as 7 (seven) P.Ws closed their side. Statement of the accused was recorded. Learned trial court below heard the argument and at the conclusion of the evidences, delivered the impugned judgment and recorded sentence as indicated above.

8. It needs to be mentioned here that here in this case, learned trial Court below was pleased only to record conviction against the accused appellant and other accused persons were acquitted.

9. Now, it is to be seen as to whether the ingredients of Sec. 498 (A) of I.P.C. had surfaced in the testimonies of the P.Ws?

10. In order to address the aforesaid question let us have a look at the ingredients of offences u/s.498(A) I.P.C. The Section 498 (A) is incorporated in the I.P.C. to deal with cruelty by husband or relatives of husband. The Sec. 498 (A) is reproduced here in below:

498-A Husband or relative or husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation. – For the purpose of this section, “Cruelty” means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

11. From a perusal of the Sec. 498 (A) I.P.C., it appears that the said Sec. deals with the cruelty subjected to the married woman by the husband or relatives of the husband. The definition of the cruelty has been given in the explanation (a) and (b) of the Section. So it is to be ascertained as to whether the materials surfaced in the testimonies of the P.Ws are sufficient to attract the aforesaid ingredients of the Section in question.

12. To address the aforesaid point for determination, let me discuss the testimonies of the victim woman who happens to be the most material witness in this case.

13. Here in this case, the victim woman namely Mosstt. Sahima Bibi is the victim as well as the complainant of this case. According to her, her marriage was solemnized with the accused Kohinur Ali on 15-08-2008. After two months of the marriage Rs.10,000/- in cash and furniture were provided. As per the instruction of the other accused persons, Kohinur assaulted her and drove her out on 20-01-2009. Further, asked her to bring Rs.10,000/-, cycle and radio and also allegedly threatened her to kill. As regards the incident village salish took place on three occasions. In support of her story altogether six P.Ws were examined by the prosecution including the I.O. of this case.

14. I have carefully gone through the testimonies of the aforesaid P.Ws but from a minute scanning of the testimonies of the P.Ws, it does not appear that the accused convict had generated any willful conduct during the married life which was of such a nature as was likely to drive the victim to commit suicide or to cause grave injuries danger to life, limb or health (whether mental or physical) of the victim. There are no medical evidences to show that the victim during married life sustained injuries on her persons in the nature as indicated above.

15. It is alleged during trial that the accused appellants placed demand of cash and kind and accordingly he harassed the victim. But as regards date, time and place of the aforesaid demand no clinching and convincing evidences has surfaced in the testimonies of the P.Ws.

16. In the results, the harassment of the victim has not been established to the effect that the same was with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by the victim or any persons related to her to meet such demand.

17. Therefore, it can be concluded that here in this case the depositions of the P.Ws are not at all sufficient to attract the ingredients of the definition of cruelty as has been narrated U/s.498 (A) I.P.C. Thus, it can be held that the offence U/s.498 (A) I.P.C. has not been well established beyond all reasonable doubts.

18. Considering the aforesaid observation, in the light of the impugned judgment and order of conviction, it can be finally concluded that impugned judgment is not sustainable in the eye of law and as such same is set aside and the appeal is allowed. In the result, the accused is acquitted and set at liberty forthwith. Judgment is delivered in the open Court. Send back the L.C.R. alongwith a copy of the judgment.

Given under my hand and seal of the Court on this 21st day of May, 2013.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri