

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

C.A. No.9 (1)/ 2011

Appellant : Md. Malbar Hussain Mondol
- Vs -
Respondent : State of Assam
Represented by the P.P, Dhubri

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

Sri Smti Renu Jain, Advocate for the Appellant.
Sri M. Zaman learned P.P. Respondent for the State of Assam

Date of Hearing : 23-05-2013
Date of Judgment : 30-05-2013

J U D G M E N T

This criminal appeal is projected against the judgment and order of conviction recorded in Bilasipara P.S. Case No.106/2007 u/s.498(A) I.P.C. by the learned S.D.J.M. (M), Bilasipara vides its judgment dated 04-02-2011 whereby the convict appellant was convicted U/s498 (A) and to suffer sentence of R.I. for a period of one year and to pay fine of Rs.2,000/- i/d to undergo further R/I for a period of two months.

2. Being aggrieved and dissatisfied with the aforesaid order of conviction the appellant 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 and also learned counsel of the parties are heard.

4. From the materials revealed during hearing of this appeal, the background story leading to the filing of this appeal is as follows:

That one Mosstt. Nur Nehar Begum vide an ejahar dated 02-05-2007 states that her marriage with the accused was solemnized in the year 1996 and they have two children. It is alleged that soon after marriage, the accused started to demand dowry and also used to physically torture her. She (informant) tolerated the torture for the sake of conjugal life but the demands did not stop. She is H.S.L.C. pass lady and was in service bur for physical torture by the accused upon her she could not

even put her signature as she lost her eye-sight. She further alleged that the accused had contracted second marriage and after the said marriage torture upon her increased, which compelled her to leave her matrimonial home.

5. The aforesaid ejahar was lodged before the Bilasipara Police Station. Accordingly, the Bilasipara Police Station on registration of a case thereon took up the investigation and at the completion of the investigation laid charge sheet against the convict appellant U/s.498(A) I.P.C.

6. On the appearance of the accused, the charge there under was framed. The charge so framed was read over, explained and interpreted to the accused to which he 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. The learned trial Court below at the conclusion of the evidences, heard the arguments and thereafter delivered the impugned judgment and recorded the sentence as indicated above. Thus the occasion of filing of this appeal.

8. Now it is to be seen as to whether the learned trial Court below was justified to convict the accused and to record the sentence as indicated above on the basis of the evidences on record.

9. To address the aforesaid point for determination, at the very out set let me narrate offence allege of under which the appellant is convicted.

10. Here in this case the accused appellant faced the conviction U/s.498 (A) I.P.C. The chapter XX-A incorporates the offence of cruelty by husband or relatives of husband. Accordingly, Sec. 498 (A) is incorporated in the I.P.C. in the following manner:

498-A. Husband or relative of 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 bare perusal of the explanation of (a) and (b), it appears that the definition of cruelty has been incorporated in the I.P.C and in the said explanation. As such, it is to be ascertained as to whether the testimonies of the P.Ws have disclosed the aforesaid ingredients in favour of the victim and against the convict appellant.

12. The victim, who happens to be the informant in the case in hand namely Mosstt. Nur Nehar Begum is examined during trial as P.W-1. During her examination-in-chief and in the trial she states as follows:

That she is the informant and the accused is her husband. On 26-12-1995 her marriage was solemnized. Till the month of January, 2007 she led conjugal life with the accused. On 15-01-2007 accused convict beat her and drove her out from the matrimonial home. At that time she was carrying pregnancy. Accused beat her by demanding dowry. Her husband married for the 2nd time. She stayed for a period of 3 (three) days in the house of different persons. Thereafter, she came to her parental home. On 19-01-2007, she delivered a child and due to assault perpetrated by the accused she lost her vision, which was operated upon. When her child was of five months old she lodged the case. Due to loss of her vision and since her family members used to visit the house of the accused, the ejarah was lodged a bit lately.

During cross examination the aforesaid witness states that at present she regained the vision. She told about the incident to the neighbours of the house of the accused and after the marriage her husband liked her. The houses of Roshan Mondal, Samad Ali & Samser Ali are nearing to the house of the accused and she informed them about the incident. Admittedly they appear to be independent persons.

13. P.W-2 Meser Ali is the father of the victim (P.W-1) according to him the accused demanded dowry from the victim and beat her and drove her out from the matrimonial home. At that time she was carrying. He deposed that he came to know about the incident from her brother.

During cross-examination he states that he did not see the aforesaid assault by his own eyes.

14. P.W-3 Rafiqul Islam being the brother of the victim had also supported her (P.W-1). P.W-4 Abdul Rashid did not see the incident by his own eyes and he also came to know about the incident from the victim. P.W-5 Ayejuddin Sk. did not support the prosecution story.

15. P.W- 6 Dr. M. Ali is the medical officer, who examined the victim and he exhibited his report under Ext-1 wherein Ext-1(1) is his signature.

16. P.W-7 Babu Ram Barua is the I.O. of the case, whose evidences are appearing to be record only.

So these are all about the evidences on record.

17. I have carefully gone through the evidences of the P.Ws. The evidences surfaced during trial would show that in the case in hand P.W-1 is the victim and P.W-2 is the father of PW-1 and P.W-3 is the own brother of P.W-1. Both the P.W-2 and P.W-3 have not witnessed the accused assaulting the victim. The house of P.W-4 is situated at a distance of 4/5 miles from the house of the accused. He (P.W-4) did not witness the marpit. P.W-5 did not at all support the prosecution story. P.W-6 & P.W-7 are official witnesses i.e. the M.O. and I.O. of the case.

The victim alleged that she was beat by the accused on 15-01-2007 on demand of dowry and driven out from the house. P.W-2 and P.W-3 being near relatives of the victim supported her. But none of the independent person has corroborated her inasmuch as the neibours namely Roshan Mondal, Samad Ali and Samser Ali were neither examined during trial nor they were cited as the witnesses.

18. On a minute perusal of the aforesaid testimonies, I have found that the materials so far surfaced in the testimonies are not sufficient to generate any willful conduct of the accused, which was of such nature as was likely to drive the victim to commit suicide or to cause grievous injuries or danger to life, limb or health of the victim. Inasmuch as the medical evidence as has been disclosed in the Ext-1 have not at all supported the story of the victim. This apart, the

materials so far surfaced in the testimonies of the P.Ws are not also sufficient to generate an impression that the harassment alleged of committed upon the victim by the accused 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 her or any person related to her to meet such demand. Inasmuch as the time, place and date of alleged demand could not be disclosed by any of the P.W. including the victim during trial.

19. For the aforesaid reasons, it can be concluded that here in this case the evidences so far surfaced during trial are not at all sufficient to bring home the ingredients of offence alleged of against the accused beyond all reasonable doubt.

20. Now considering the impugned judgment in the light of the aforesaid observations, it can be finally concluded that the impugned judgment is not tenable in the eye of law. As such, same is set aside. In the result the accused is acquitted of the offence alleged of and set at liberty forthwith. The appeal is allowed on contest and without cost. 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 30th day of May, 2013.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri