

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, DHUBRI

GR 187 of 2009 [GKJ PS 403/ 09]

State of Assam

-Vrs-

Sri Ashwini Roy

...Accused person

Present : Shri S. Datta, AJS

Learned Advocates appeared :

For the prosecution--- Shri J.B. Sarkar, Addl. PP

For the defence----- Shri U. K. Dutta

Evidence recorded on : 22.4.13, 20.9.13, 26.9.13 & 26.5.14.

Argument heard on : 26.05.14

Judgment delivered on : 07.06.14

Penal law involved : u/s 498(A) IPC

J U D G M E N T

1. A complaint was lodged on 11.08.09 by one Smt. Krihna Roy to the effect *inter alia* that she was married to accused Aswini Roy about three years back (counted from the date of the complaint) and a male-child has been born out of their wedlock. Since about three months before the date of the complaint, the accused person along with his relatives named in the complaint started to torture the complainant demanding a cash of Rs.50,000/-. On 10.7.09, in the morning-hours, they beat her severely and drove her out along with the child for non-payment of the money. She sustained injury on her left shoulder and underwent treatment. The complainant added that since there was a proposal for compromise, there was some delay in lodging the complaint.

2. The complaint was forwarded u/s 156(3) CrPC and the police, after investigation, submitted Charge-sheet against the above-named accused person only. On his appearance before the Court, the copies was supplied to him u/s 207 CrPC. A charge u/s 498(A) IPC was framed against and read over & explained to him by my learned predecessor, to which the accused person pleaded not guilty and claimed to be tried, as the order dated 05.11.12 shows. The prosecution, in course of trial, examined five witnesses including the alleged victim and, at this stage, I closed further evidence for the prosecution for the reasons stated in the order dated 01.04.14 & 26.05.14. The accused person was then examined u/s 313 CrPC ; he denied the allegations and declined to adduce any evidence. I have heard the argument of both sides at length .

3. The sole **Point for Determination** in this case is whether the accused person being the husband of the complainant (now informant) subjected her to cruelty within the meaning of Explanation(b) to Sec.498(A) IPC on different dates in his house, particularly on 10.7.09, and thus committed an offence punishable u/s 498(A) IPC and, if so, what punishment he deserves.

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Decision & reasons therefor :

4. PW-1 Smt. Krishna Roy, the informant-victim, deposed that about three years before the date (22.4.13) of her evidence, the accused person, her husband, ousted her after a severe beating demanding a cash of Rs.50,000/- & a motorcycle. She took shelter in her paternal home and reported the matter to her father (PW-2) who expressed his inability to meet the demand. She then lodged the complaint (now Ejahar) vide Ext.1.

5. PW-2 Praneswar Roy, the father of PW-1, testified *inter alia* that the accused person used to torture and beat PW-1. One day he beat her severely in the house of PW-2 also for which she had to undergo treatment.

6. PW-3 Hemola Roy is a neighbour of PW-2, as he claimed in his evidence. He testified that one day he heard a 'hulla' in the house of PW-2 and went there only to find PW-1 in a senseless condition. He heard that the accused person had beaten her. PW-3 stated in his cross-examination that PW-2 was a resident of Rotiadoha market which is at a distance of 2/3 Km from the Belguri market. The description of PW-3, as I gather from the deposition-sheet & other parts of the record, he is a resident of Belguri.

7. PW-4 Rabi Nath & PW-5 Rita Bala Roy deposed that PW-1 had been married to the accused but latter started to live separately for reasons not known to them. They have been treated as hostile witnesses and cross-examined by the prosecution but they denied to have made any statement to the police at all.

8. PW-1 testified that the accused person beat & tortured her demanding a cash of Rs.50,000/- etc. and that she reported it to her father (PW-2). But PW-2 is totally silent about the dowry-demand. He rather stated that he was unaware as to why the accused person used to beat his daughter (PW-1). He being none other than her father would invariably know if the allegations of dowry-demand were true. PW-3 claimed that he found PW-1 in a senseless condition in the house of PW-2. PW-2 also testified that the accused severely beat PW-1 in his (PW-2's) house. But PW-1 herself is silent about any such occurrence in the house of her father (PW-2). The evidence of PW-3 shows further that he used to reside two-three Km away from the house of PW-2. How he could hear the commotion from such a distance is nobody's guess. Needless to repeat, PW-4&5 have not supported the allegations of dowry-demand, torture & ouster at all.

9. The complaint was admittedly lodged about one month after the alleged ouster of PW-1. PW.2 claimed that a 'Salish' was held over that matter but the Ejahar (Ext.1) shows that there only a proposal for 'Salish'. PW-1 rather suggested in her evidence that shortly after her ouster she lodged the Ejahar. She kept totally silent in the Court about any 'Salish' or proposal therefor.

10. Situated thus, I am of the considered opinion that the prosecution has failed to prove the alleged offence beyond all reasonable doubts. Hence, I acquit the accused person of the charge u/s 498(A) IPC and direct that he be set at liberty forthwith. His bail bond shall stand discharged on expiry of 6(six) months from today vide. the spirit of the provisions u/s 437-A CrPC.

Dictated & corrected by me and given under my hand & seal of the Court on this 7<sup>th</sup> Day of the Month of June in the year 2014.

Addl. Chief Judicial Magistrate,  
Dhubri : Assam