

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

Criminal Appeal No. 10/2016

Appellant : Md. Hamed Ali
S/o. Jahir Hussain
Vill – Barundanga
P.S- Tamarhat
Dist. Dhubri, Assam

- Vs -

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

Present : Sri Rajib Goswami, AJS
Sessions Judge, Dhubri

Sri R.K. Verma, Advocate for the Appellant.
Sri M. Zaman, learned P.P. Respondent for the State of Assam

Date of Hearing : 17-11-2016
Date of Judgment : 29-11-2016

J U D G M E N T

This Criminal Appeal is preferred u/s. 374 (2) of Cr.PC. praying for setting aside conviction and sentence passed by the learned Addl. Chief Judicial Magistrate, Dhubri convicting the accused/Appellant Hamed Ali, u/s.323 of IPC, R.I. for 3 months and fine of Rs.1000/- I/d. to 15 days of S.I. against the judgment dated 29-08-2016 in connection with G.R. Case No.459/11, Tamarhat P.S. Case No.133/11, u/s.498 (A)/34 of IPC.

2. Learned P.P. was heard along with learned counsel of the appellant.

3. I have gone through the judgment of learned lower Court dated 29-08-2016. The case had been initiated on a FIR by one Jabbar Ali dated 21-11-2011 alleging cruelty that had been perpetrated on his daughter with demand for dowry and the case had been registered by Tamarhat P.S. u/s.498 (A)/34 IPC. Charge sheet had been filed accordingly against accused persons Hamed Ali, Jahirul, Jahera Bibi and Hamed Ali. Thereafter charge u/s.498 (A)/34 had been framed by learned Addl. C.J.M. against above accused persons. As many as seven PWs had been examined.

4. I have gone through the evidence on record that had been discussed by learned Addl. C.J.M. in his judgment dated 29-08-2016. Now the present appeal had been preferred by the appellant Hamed Ali primarily on the ground that evidence of PW-7, the M.O. clearly indicated that the victim was not examined on police requisition and he had handed over the examination report on police requisition after 6 (six) months of examination and as such the evidentiary value of the opinion of the M.O. is diminished. Further the prosecution has also failed to prove the offence u/s.323 of IPC.

5. On perusal of the judgment of learned Addl. C.J.M, Dhubri, I find that prosecution had examined as many as seven witnesses including the M.O. and I.O. and discussion of the evidence by the learned Addl. CJM, Dhubri reveals that PW-1 is the father and the informant in the case. The evidence of PW-1 reveals that he had lodged the FIR, ext-1 bearing his signature ext-1 (1). PW-1 had alleged that the accused Hamed Ali had demanded Rs.25,000/- and subjected his daughter to torture and one day on his arrival at the house of the accused he had found his daughter lying injured on the ground. The evidence of PW-1 to the extent of having seen his daughter lying injured is a relevant fact. It is further revealed from the evidence of PW-1 that he had heard from his daughter that those injuries had been caused by her husband and he had also been told by his daughter that his daughter had been tied to a bed by her father-in-law, Jaharuddin. PW-1 wanted to take his daughter back but the father-in-law of his daughter having not allowed PW-1 to let him take his daughter back home, he had gone to the police station and filed the FIR.

6. Now coming to the evidence of PW-7, the Medical Officer who had examined Rafina Bibi, the victim, 23 years on 23-11-2011 had found following injuries. Bruise over left leg, bruise over both left and right thigh, red in colour and injuries were reported within 12 hours of its having taken place. The injuries were simple in nature, fresh and were caused by blunt object as per the evidence of M.O.

7. Now "cruelty" for the purpose of section 498 (A) of IPC 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 demand.

8. PW-2, the victim, had supported the fact of marriage to Hamed Ali and about child born to them within two years of her conjugal life with her husband. PW-2 in her testimony had also alleged about the accused persons demanding Rs.20,000/- from her and in the process of coercing her to bring the amount from her father, her husband, the present accused had assaulted PW-2. It also appears from the evidence of PW-2 that there had been a FIR lodged earlier at Paglahat O.P. and police had taken her to Tamarhat hospital in connection with the said case and thereafter to her father's house. Thereafter on the assurance from her husband that he would not subject PW-2 to any ill-treatment or torture, she had again gone back to her husband's house. However, the cruelty upon her did not cease. Thus it is evident from the evidence of PW-1 and PW-2 that there had been serious differences between PW-2 and her husband and differences emanated from PW-2's failure to fetch Rs.20,000/- demanded by her husband. PW-3 is an independent witness. Once while she was at the village of accused persons, she happened to visit the house of the accused persons on hearing that the victim, Opina had mercilessly been beaten by her husband. PW-3 personally had seen injuries on the nose, mouth, hands and legs of the victim. PW-4 had stated about a quarrel between husband and wife. PW-5 in his testimony had deposed that he is a close relative of informant and had accompanied the informant to the house of the victim and found Opina lying injured at the courtyard of the house of the accused. PW-6 is the I.O. who stated to have received the FIR on 21-11-2011.

9. Now considering the evidence of prosecution witnesses, I quite agree with the findings of learned Court below with regard to the evidence of PW-1 being reported as it was found out from cross-examination that PW-1 that his daughter never had been assaulted in his presence neither the accused had demanded Rs.25,000/- directly from him. It is also evident from the discussion of the evidence that during the filing of the case the victim had been staying with PW-1 for two months. It is also evident from the evidence of PW-1 on record that earlier also the victim did not stay at the matrimonial house for more

than two months and used to come back to her parents house. Further from the discussion of the evidence of PW-1 that PW-1 had deposed in his testimony that the father-in-law of his daughter wanted to share bed of his daughter. But the alleged fact had not been supported by PW-2 in her evidence. Further it is evident from the evidence of PW-2 that she had informed her father, PW-1 with regard to the alleged demand of Rs.20,000/- by the accused but PW-1 has not related about PW-2 informing him about the demand of Rs.20,000/- by the accused in his evidence. Thus I find no scope for interference in the findings of the learned Court below holding the fact of the alleged demand of cash by the accused from PW-1, not being wholly reliable on the face of lack of corroboration of evidence of PW-1 and PW-2 in this regard. Thus once the alleged fact of demand for dowry is missing, the injuries proved to have been received by PW-2, the victim is not cruelty for the purpose of explanation 1 of Section 498 (A) of IPC.

10. Further, it is also evident from the evidence of PW-2, the victim that she had peaceful conjugal life for two years with her husband and a child was born to them. For the 1st time on 01-08-2011 a case of mental and physical torture had been reported to the police and on 08-08-2011 after seven days the dispute was settled amicably. 2nd case was reported on 21-11-2011. Considering the evidence of PW-1 in his cross-examination that his daughter had not stayed at her matrimonial house for more than two months at a time, it will not be conducive in the facts and circumstances of the case to give it a colour of an offence u/s.498 (A) of IPC, the demand for dowry not having been established. Considering there had been a compromise earlier with the accused following a FIR and same having been established, what evolves from the circumstances surfaced in the evidence of PWs is more of a husband and wife difference where the PWs examined by the prosecution had corroborated each other the alleged fact of assault by the accused on the victim and their evidence receiving support from the findings of the Medical Officer.

11. Thus so far the findings of the learned Court of Addl. CJM, Dhubri convicting the accused/appellant for an offence u/s.323 of IPC in the light of Section 222 of Cr.PC instead of the offence u/s.498 (A) of IPC is concerned, I find not scope for interference. However, considering the circumstances that had come up in the evidence of PWs, indicating a strained husband and wife

relationship despite a male child born to the couple and in the prospect of a reconciliation in near future, I hold that the sentence of three months of R.I. imposed by learned lower Court upon the accused/appellant in the circumstances instead of bringing the husband and wife together will help in making a further dent in the already strained husband and wife relationship.

12. Thus in the premises, the findings of learned Addl. C.J.M, Dhubri with regard to the conviction of the accused/appellant Hamed Ali u/s.323 of IPC stands affirmed. The appeal is partly allowed to the extent of setting aside the sentence of R.I. for 3 (three) months and is replaced by release on probation of good conduct u/s.3 of Probation of Offenders Act, 1958 after due admonition not to repeat such offence in future. The sentence of fine of Rs.1000/- stands unaltered.

13. Send back the copy of the judgment along with the L.C.R. to the ld. lower Court.

Given under my hand and seal of the Court on this 29th day of November, 2016.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri.