

DISTRICT: DHUBRI

IN THE COURT OF THE SESSIONS JUDGE AT DHUBRI

PRESENT : Shri A. Chakravarty, M.A., LL.M.,A.J.S.

Criminal Appeal No. 3 of 2017

(This appeal has been filed challenging the judgment and order dated 10-03-2017, passed by the learned Chief Judicial Magistrate, Dhubri, Smt. T. Hussain, in G.R. Case No. 159 of 2011, under Section 498-A IPC).

Motiur Rahman Mondal

...Appellant

-Versus -

1. State of Assam

2. Msstt. Maleka Khatun

...Respondents

Appeal filed on : 20-04-2017

Arguments heard on : 20-06-2017

Judgment Delivered on : 21-06-2017

ADVOCATES WHO APPEARED IN THIS CASE ARE:-

Shri Jaynal Abedin, advocate for the appellant

Shri Maniruz Zaman, P.P. for the State of Assam

Shri Nazrul Islam, Advocate for the respondent No.2.

J U D G M E N T

1. This appeal has been filed challenging the judgment and order dated 10-03-2017, passed by the learned Chief Judicial Magistrate, Dhubri, Smt. T. Hussain, in G.R. Case No. 159 of 2011, whereby the appellant was convicted for commission of an offence under Section 498-A of the Indian Penal Code, 1860 ("the IPC", for short) and sentenced him to undergo rigorous imprisonment for three months and to pay fine of Rs.5,000/- (Rupees five thousand) only, in default to undergo simple imprisonment for two months.

2. The factual matrix of the case in which the appellant came to be prosecuted and convicted is that the informant Msstt. Maleka Khatun is the lawfully married wife of the appellant (herein after referred to as "the accused"). Their marriage was solemnized on 09-02-2010 as per Islamic rites. At the time of the marriage, the father of the informant gave an amount of Rs.50,000/- (Rupees fifty thousand) only, gold and silver ornaments, furniture, kitchen utensils etc., to the accused. After the marriage, the accused took the informant to his house and started conjugal life. After two/three months of the marriage, at the instance of the members of his family, the accused started torturing the informant without any rhyme and reason. The accused also kept the informant under starvation. Bearing the torture, the informant somehow stayed with the accused. Thereafter, the accused asked the informant to bring dowry of Rs.50,000/- (Rupees fifty thousand) only, from her father. When the informant refused to meet his said demand for dowry as her father was a poor man, on 27-01-2011, the accused severely assaulted her and drove her out of the matrimonial home and told her that if she brings the dowry, he will live with her and threatened her that if she comes back without the dowry, he will do away with her. Left with no all alternative, the informant took shelter in her parental home. Thereafter, along with her relatives, the father of the informant went to the house of the accused but, the accused told him that unless he meets his demand for dowry, he will not live with the informant and drove him out. Left with no alternative, the father of the informant called a village meeting. But, in the said meeting also, the accused told that he will not live with the informant unless he receives the dowry. Therefore, the informant filed the FIR of the instant case in the Court of the learned Chief Judicial Magistrate, Dhubri on 04-04-2011.

3. The learned Chief Judicial Magistrate, Dhubri, transferred the case to the learned Judicial Magistrate, First Class, Dhubri, for disposal. The learned Judicial Magistrate, First Class, Dhubri forwarded the complaint to the Officer In-charge of the Fakirganj Police Station for registration of a case, investigation and submission of report in final form.

4. Based on the complaint, the Officer In-charge of the Fakirganj Police Station registered the case No.74/2011, for commission of offence under Section 498-A IPC against the accused Motiur Rahman, Abu Bakkar Mondal, Bhanu Begum, Abdur Rahman Mondal and Abdul Rashid Mondal and investigated the case. After completion of investigation, the police filed charge sheet for an offence under Section 498-A IPC against the accused Motiur Rahman Mondal only, in the Court of the learned Chief Judicial Magistrate, Dhubri and he faced the trial.

5. During trial, the learned Chief Judicial Magistrate, Dhubri framed a charge under Section 498-A IPC against the accused Motiur Rahman Mondal. When the contents of the charge were read over and explained to the accused, he pleaded not guilty and claimed to be tried.

6. The prosecution, in order to prove its case, examined four witnesses. The accused did not examine any witness.

7. In his examination under section 313 Cr.P.C., the accused has denied the prosecution case and has stated that the allegations levelled against him are false and baseless.

8. The learned trial Court formulated the following point for determination:-

I) Whether the accused, being the husband of the Musst. Maleka Khatun, subjected her to cruelty with a view to coerce her and her family members to meet his unlawful demand for dowry and thereby committed the offence punishable under Section 498-A IPC?

9. After examining the evidence on record and hearing the arguments advanced by the learned counsels for both the sides, the learned trial Court decided the point in the affirmative and passed the impugned judgment and order dated 10-03-2017 convicting the accused for commission of an offence under Section 498-A IPC and sentenced him to undergo rigorous imprisonment for three months and to pay fine of Rs.5,000/-(Rupees five thousand) only, in default to undergo simple imprisonment

for two months. Aggrieved, the accused preferred this appeal on the following amongst other grounds: -

I) That the learned trial Court has erred in law and fact in arriving at a correct and judicious decision in the case.

II) That the learned trial Court has failed to make a correct judicious, impartial and objective appreciation of the evidence on record.

III) That the learned trial Court failed to appreciate the evidence on record and thus arbitrarily arrived in an erroneous finding.

IV) That the learned trial Court, without examining the I.O. and M.O. of the case and without giving opportunity to take contradiction from the I.O., pronounced the judgment and sentence against the appellant.

V) That the learned trial Court ought to have considered that the I.O. of the case did not examine the neighbouring witnesses and the eye witnesses who were present in the place of occurrence at the time of the occurrence.

VI) That the learned trial Court in her judgment shifted the burden of proof to the appellant in place of prosecution.

VII) That the learned trial Court ought to have considered that the witnesses on record have miserably failed to establish the case under Section 498-A I.P.C.

VIII) That the learned trial Court ought to have held that the prosecution has failed to prove its case beyond all reasonable doubt.

10. Now the question that requires to be answered in this appeal is whether the impugned judgment and order dated 10-03-2017 is sustainable in the law and facts of the case?

11. I have carefully examined the impugned judgment and order dated 10-03-2017, the memorandum of appeal, the evidence and the documents on record and after hearing the arguments advanced by the learned counsels for both the sides, give my decision as follows:-

12. During hearing, the learned defence counsel vehemently argued that the learned Court below has erred in law and facts in passing the impugned judgment and order dated 10-03-2017 in as much as, the prosecution has failed to prove that the accused, being the husband of the Musst. Maleka Khatun, has subjected her to

cruelty demanding dowry and on account of her failure to meet his demand for dowry. Therefore, the learned defence counsel has submitted that the impugned judgment and order is liable to be set aside and quashed and the accused is deserved to be acquitted.

13. On the other hand, the learned Public Prosecutor has argued that applying judicial mind and relying on the evidence on record, the learned trial Court has rightly passed the impugned judgment and order dated 10-03-2017. Therefore, the learned Public Prosecutor has submitted that the appeal may be dismissed and the impugned judgment and order may be upheld.

14. To understand the rival contentions, let us discuss the evidence on the record.

15. PW-1 Musstt. Maleka Khatun, the informant has deposed that after the marriage, the accused started torturing her demanding dowry of Rs.50,000/- and on account of her failure to meet his said unlawful demand for dowry. The accused used to beat her and also used to keep her under starvation. The accused also used to keep her hands and legs tied and did not allow her relatives to meet her. Ultimately, the accused told her father that either he should meet his demand for dowry or he should take her back. Thereafter, she waited for the accused to take her back but, he never came to see her. Therefore, in the month of January, 2011, accompanied by her father, she went to the house of the accused but, the accused drove her out. A meeting was held for the same in the village but, in the meeting also, the accused reiterated his demand and hence, the matter could not be resolved.

16. In the cross-examination, she has stated that she has filed the complaint after 15/16 days of the said village meeting. She has not explained the delay in filing the complaint. Houses of Abdul Kader, Abdul Jolil and Mohammad Hazi are situated near the house of the accused. They are relatives of the accused. They know about the occurrence. The entire incident of torture has taken place inside the house of the accused. Due to poverty, she could not go to the Doctor to take treatment for the injuries. She took treatment at the Saleartek Hospital. She did not tell the police that she took treatment at the Saleartek Hospital. She has no document to prove that she has taken medical treatment. She did not tell the police that the accused asked her father over phone to pay him the money or to take her back. She has denied the suggestion that she did not tell the police that her father asked the accused to

resolve the matter holding meeting in the village. She did not tell the police that the accused did not allow her relatives to meet her. She has denied the suggestion that the accused never demanded dowry from her and never subjected her to torture. She has denied the suggestion that she left the matrimonial home of her own accord as she could not adjust to the poor standard of living of the accused.

17. PW-2 Nasiruddin Mollah has deposed that the accused used to quarrel with the informant demanding dowry of Rs.50,000/-. A co-villager of the accused, namely Kader, called them and they attended a village *salich* (village meeting). No settlement was arrived in the said village meeting. They then advised the informant to take recourse to law.

18. In the cross-examination, he has stated that he did not see the accused assaulting the informant or demanding dowry from her. The police did not ask him anything about the alleged occurrence. On two occasions, he had visited the house of the accused.

19. PW-3 Habibar Rahman Mollah, the grandfather of the informant has deposed that after six/seven months of the marriage, the accused started torturing the informant demanding dowry of Rs.50,000/- and for her failure to meet his said unlawful demand for dowry, the accused drove out the informant from his house. Since then, the informant has been staying in her parental home. Thereafter, the accused has contracted another marriage.

20. In the cross-examination, he has denied the suggestion that the informant was a brilliant student and she did not wanted to live with the accused as the accused is a poor and illiterate person and therefore, they brought back the informant and that the informant has filed this case against the accused making false allegations. He has also denied the suggestion that they asked the accused to contract second marriage as the informant refused to go back to the matrimonial home and therefore, the accused has contracted the second marriage. The police did not ask him anything in connection with this case. He has denied the suggestion that as the informant is his granddaughter, he has deposed falsely.

21. PW-4 Shri Abdul Waresh has deposed that after six/seven months of the marriage, the accused started torturing the informant demanding dowry of Rs.50,000/- and for her failure to meet his said unlawful demand for dowry. The informant told her father about the same over phone. The father of the informant requested him to meet the informant at the matrimonial home. Accordingly, they

went to the matrimonial home of the informant and discussed the matter with some villagers. As the matter could not be resolved, they brought back the informant and later on, the informant filed this case.

22. In the cross examination, he has denied the suggestion that the accused never demanded any dowry from the informant and never tortured her. He does not know the names of the co-villagers of the accused. Police did not ask him anything in connection with this case.

23. As can be seen from the testimonies of the prosecution witnesses, the accused subjected the informant to torture demanding dowry and ultimately, and on account of her failure to meet his unlawful demand for dowry, drove her out of his house. The evidence on record does not support the suggestion put to the informant that she left the matrimonial home of her own accord as she could not adjust to the poor standard of living of the accused. The accused also did not adduce positive evidence to prove the suggestion.

24. Further, the contention of the accused that he is a poor illiterate person and therefore, the informant left his house of her own accord and the PW-3 and others asked him to contract second marriage, is also not believable. The evidence on record does not support the same and accused did not adduce any positive evidence to prove the same. Had the informant left the matrimonial home of her own accord and asked the accused to marry another woman, she would not have filed the instant case.

25. Failing to shake the prosecution case, the learned defence counsel vehemently argued that as the prosecution did not examine the co-villagers of the accused, the case of the prosecution is not believable is not tenable in the eye of law. Because, if the accused thinks that the co-villagers would not have supported the prosecution case, he could have examined them as defence witnesses. Therefore, for the same, it cannot be held that the prosecution case is false. Therefore, as there is no evidence to hold that the informant has left the matrimonial home of her own accord as she could not adjust to the poor standard of living of the accused, it must be held that the informant left the matrimonial home due to the cruelty meted out to her by the accused, which is an offence punishable under Section 498-A IPC. In the impugned judgment and order dated 10-03-2017, the learned Chief Judicial Magistrate has discussed in detail about the reasons for holding the accused guilty of committing the alleged offence which, I found to be correct.

26. In view of the above discussion, I do not find any reason to interfere with the impugned judgment and order dated 10-03-2017 passed by the learned Chief Judicial Magistrate, Dhubri Smt. T. Hussain, in G.R. Case No. 159 of 2011, under Section 498-A IPC.

O R D E R

27. In the result, considering the entire facts and circumstances of the case, the criminal appeal is dismissed on contest.

28. The impugned judgment and order dated 10-03-2017, passed by the learned Chief Judicial Magistrate, Dhubri Smt. T. Hussain, in G.R. Case No. 159 of 2011, under Section 498-A IPC, is hereby affirmed. The appellant is directed to surrender before the learned Chief Judicial Magistrate, Dhubri to serve out the sentence.

29. Return the LCR along with a copy of this judgment, immediately.

30. Signed, sealed and delivered in the open Court on this the 21st day of June, 2017 at Dhubri.

(A. Chakravarty)
Sessions Judge, Dhubri

Dictated & corrected by me.

(A. Chakravarty)
Sessions Judge, Dhubri