

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

C.A. No.14 (2)/ 2010

Appellant : Md. Omar Hassan
- Vs -
Respondent : State of Assam
Represented by the P.P, Dhubri

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

Sri M.U. Sheikh and Sri Abdul kuddus, Advocates for the Appellant.
Sri M. Zaman learned P.P. Respondent for the State of Assam

Date of Hearing : 20-05-2013
Date of Judgment : 29-05-2013

J U D G M E N T

This criminal appeal is projected against the judgment and order of conviction dated 25-05-2010 passed in G.R (MKCR) Case No.415/2007 by the learned Judicial Magistrate, 1st Class, Dhubri.

2. Being aggrieved and dissatisfied with the aforesaid impugned order, the appellant Md. Omar Hassan, assailed the impugned judgment and order 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 appellant as well as Public Prosecutor, Dhubri are heard.

4. The story as has been surfaced during hearing may be narrated as follows:

That the informant Abdul Hoque Sarkar lodged an ejahar on 28-12-2007 as follows:

That his daughter was married to the accused Umar Hassan (Ripon) by observing provision of law of the land and by executing registered Kabin Nama. Soon after the marriage his daughter was subjected to various sorts of mental and physical torture. But his daughter continued the married life with the accused bearing all sorts of torture. Despite the same the torture continued and ultimately on 26-12-2007 the accused by demanding huge amount of dowry beat his daughter mercilessly by lathi, batam etc. Hence the occasion of filing of this ejahar.

5. The Mankachar Police Station on the basis of aforesaid ejahar registered a case and took up investigation and at the conclusion of the investigation submitted charge sheet against the accused U/s.498(A) I.P.C.

6. On the appearance of the accused, the charge U/s.498 (A) I.P.C. was framed and the same was read over and explained, to which accused pleaded not guilty and claimed to be tried.

7. During trial the prosecution side after examining as many as 8 (eight) P.Ws including M.O. And I.O closed their side. Statement of the accused was recorded. The accused declined to adduce any evidences. Thereafter, learned trial Court below was pleased to hear the arguments advanced by the learned counsels of both the parties.

8. Accordingly, at the conclusion of the trial, learned trial Court below delivered the impugned judgment whereby the accused appellant was convicted U/s.498(A) I.P.C. and sentenced to suffer S.I. of 6 (six) months and also to pay fine of Rs.5,000/- l/d to S.I. of another 15 (fifteen) days. Thus the occasion of the appellant to prefer the instant appeal.

9. Under the aforesaid premises, it is to be ascertained as to whether the materials surfaced in the testimonies of the P.Ws would justify the conviction of the accused appellant.

Decisions and reasons thereon

10. Here in this case accused appellant had faced the trial U/s.498 (A) I.P.C. The I.P.C has incorporated the Sec. 498(A) under Chapter XX-A to deal with cruelty by husband or relatives of husband. The Section itself has given the definition of cruelty and the same has been incorporated under clause A and B. For the sake of convenience the sec. 498 (A) is reproduced herein below:

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. Now, it is to be seen as to whether the ingredients of Sec. 498 (A) I.P.C. which has been mentioned in clause A and B of the said sections are present or not.

12. Admittedly, the offence alleged of have been committed against the married women, who happens to be one Rousan Akhtar Zamin, who is examined as P.W-3 in the case in hand.

13. At the very outset let us have a look at the evidence of P.W-3. According to her two years ago her marriage with the accused had taken place. At the time of marriage her father gifted away the articles worth Rs.2,00,000/- (Rupees two lakhs only). After some days the accused placed the demand of Rs.3,00,000/- (Rupees three laksh only) and started to harass her both physically and mentally. The accused by showing dagger and rod intimidated her and also attempted to pour kerosene oil on her body. When she raised alarm, then he covered her mouth by the pillow and when she tried to remove the pillow the accused attempted to strangulate her. Prior to the aforesaid incident, the accused also beat her on a numbers of occasions. This apart, the accused one day had driven her out from the house and she was compelled to stay outside of the house. During the days of Panchayat Election of the year 2007 when accused started to beat her she raised alarm then his maternal uncle Zakir Hussain who, was busy in the election campaigning came to know about the incident and he informed her father and accordingly on 28-12-2007 her father came whom also accused misbehaved and placed the demand of Rs.3,00,000/- (Rupees three laksh only) before him also. Thereafter, her father went to police station and police recovered her from the house of accused.

14. Considering her testimonies in the light of the deposition of I.O. (P.W-7), it is found that the P.W-3 during investigation did not state before him that accused attempted to pour kerosene oil on her body and attempted to kill her by setting her on fire and the accused had driven her out from the house due to which she had to stay outside of the house nor the victim told before the I.O. during investigation that on 27-12-2007 when the accused was beating her and when her maternal uncle and father came to the house, the accused placed the demand of Rs.3,00,000/- (Rupees three laksh only) nor the victim told before the I.O. that the police recovered her from the house of the accused.

15. From the deposition of the I.O, it is clear that the victim during investigation did not tell before him that accused had demanded a sum of Rs.3,00,000/- (Rupees three laksh only) from her rather the I.O. deposed before this Court that the victim told before him that accused did not place any demand of dowry. Also the I.O. during cross-examination told before the learned trial Court below that the victim told before him during investigation that on 28-12-2007 the victim went to her parental home.

16. From the aforesaid testimonies of the P.W-3, it appears that the witness being the most materials witness had improved the prosecution story during trial and further her testimonies are not sufficient to attract the ingredients of cruelty as have been incorporated in Clause – A & B of Sec. 498 (A) I.P.C. inasmuch as there are no materials to show that the conduct of accused was of such a nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health also the said testimonies are not at all sufficient to attract the clause B of aforesaid Section.

17. P.W-1 Md. Abdul Haq Sarkar being the informant during trial and in his examination-in-chief narrated the story in the same tune as he disclosed in the ejahar.

During cross-examination he stated that on 28-12-007 he lodged ejahar and in the ejahar the incident of assault dated 26-12-2007 was mentioned but the time was not mentioned therein nor he stated causes of delay in lodging ejahar also he did not mention the amount of demand of money.

From the testimonies of the P.W-1, it appears that he come to know about torture both (mental & physical) allegedly let loose by the accuse from his daughter.

18. P.W-2 Md. Jakir Hussain being the maternal uncle of the victim appears to be reported witness of the incident. P.W-4 Md. Badiar Zaman also failed during trial to bring any ingredients of the offence alleged of. P.W-5 Md. Khairul Islam appears to be reported witness as to the family dispute between victim and the accused.

19. P.W-6 Md. Nizamur Rahman another reported witness of the instant case. P.W-7 is the I.O. of this case whose evidences are appearing to be record only.

20. P.W-8 Dr. Saiful Islam is the Medical Officer of this case, who examined the victim on 29-12-2007 and during examination the M.O. found injuries which were simple and caused by blunt weapons. From the deposition of the M.O. the injuries surfaced in the testimonies of M.O. does not appear to be grave injury and the same does not appear to be dangerous to life, limb or health.

So these are all about the evidences on record.

21. On a minute perusal of the aforesaid testimonies of the P.Ws it can not be held that here in this case the materials so far surfaced in the testimonies of the P.Ws more particularly victim (P.W-3) are absolutely sufficient to attract ingredients of cruelty as mentioned in the section 498 (A) of I.P.C.

22. Considering the aforesaid observation in the light of the impugned judgment and order of conviction, it is found that the learned trial Court did not appreciate the evidences in the proper perspective of the law of the land and as such in my considered opinion the impugned judgment and order of conviction is not sustainable in the eye of law, as such same is set aside and due to the insufficiency of evidences, the accused is acquitted on benefit of doubt and set at liberty forthwith. In the result, the appeal has merit and accordingly the same 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 29th day of May, 2013.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri