

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, DHUBRI

Case no : GR (GKJ) 482 of 2007

State of Assam

-Vrs-

1. Md. Dilbor Ali
  2. Mustt. Majiron Bibi
  3. Mustt. Hasna Bibi
  4. Md. Mobarak Ali
  5. Md. Aminur Ali
- .....Accused Persons

Present : Shri S. Datta, AJS

Learned Advocates appeared :

For the prosecution ----- Md. J. Bari Sarkar, APP

For the defence ----- Md. Abdus Samad Miah

Evidence recorded on : 22.02.13, 17.8.13 & 22.10.13

Argument heard on : 31.12.13

Judgment delivered on : 10.01.13

Penal law involved : u/s 498(A)/34 IPC

J U D G M E N T

1. A complaint was lodged on 05.9.07 by one Mustt. Meghna Bibi to the effect, *inter alia*, that she was married to accused Dilbor about five years back (counted from the date of complaint) according to the Shariyat Rules and girl-child was born out of their wedlock. Shortly after the marriage, accused Dilbor, at the instance of his relatives i.e the other accused persons, started to beat & otherwise torture the complainant demanding money. After the birth of the girl-child, the torture became intense. He began to demand for a cash of Rs.50,000/- for purchasing a vehicle and, as the complainant expressed her inability to meet the demand, he beat her, even on her private parts & eyes, particularly on 01.9.07, and ousted her alongwith the child after taking out her ornaments by breaking open a suitcase. She took shelter in her paternal home and underwent treatment ; accused Dilbor, on the other hand, started hobnobbing with the daughter of accused Mobarak Ali in an illicit manner. Hence this case.

2. The complaint was forwarded to the Golakganj PS u/s 156(3) CrPC and the police, after investigation, submitted Charge-sheet against all the five accused persons named above. On their appearance before the Court, a charge u/s 498(A)/34 IPC was framed against and read over & explained to them by my learned predecessor, after supplying copies u/s 207 CrPC and hearing both sides, to which the accused persons pleaded not guilty and claimed to be tried, as the order dated 24.8.12 shows.

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3. The prosecution, in course of trial, examined three witnesses including the complainant (now informant) and declined to adduce further evidence. The accused persons were then examined u/s 313 CrPC ; they denied the allegations and declined to adduce any evidence. I have heard the argument of both sides.

4. The sole **point for determination** in this case is whether the accused persons being the husband & in-laws (as the case may be) of the informant subjected her to cruelty within the meaning of Explanation (b) to Sec.498(A) IPC on any day/s in the period of her stay in her matrimonial home, particularly on 01.9.07, in furtherance of their common intention, and thus committed an offence punishable u/s 498(A)/34 IPC and, if so, what punishment the accused persons deserve.

Decision & reasons therefor :

5. PW-1 Meghna Bibi, the informant-victim in this case, proved her Ejahar as Ext.1 and deposed to the effect that she was married to accused Dilbor about five years before the date (22.02.13) of her evidence. PW-2 Alapuddin Bepari (father of PW-1) and PW-3 Majinur Rahman (brother of PW-1) also testified that PW-1 was married to him. The defence, however, has not disputed the fact of marriage.

6. PW-1 deposed further that about five years after the marriage, the accused persons started demanding Rs.50,000/- from her and, on her failure to meet the demand, beat and otherwise tortured her ; they also snatched out her gold and ousted her after holding back her daughter. But PW-1 had stated in her complaint/Ejahar (proved by her as Ext.1) that her child was also ousted alongwith her. She nowhere stated in her evidence that accused Dilbor beat on her eyes or private parts or that he had any illicit relation with the daughter of accused Mobarak Ali. Moreover, if she was married five years before the date of her evidence and the demand/torture/ouster was made/done five years after the marriage as she testified, the occurrence obviously took place on or around the date of her evidence (22.02.13) and, by no stretch of lenient interpretation, in 2007 or prior thereto. So, the allegations made in the evidence on records is either false or not the subject-matter of this case ; the evidence of PW-1 in her cross-examination that she once went back to her matrimonial home following an amicable settlement pertaining to the alleged occurrence, in my considered opinion, supports this view. In fact, PW-1 has not even winked at any occurrence of 2007 or prior occurrence in her evidence.

7. PW-2 testified that two or three years after the marriage between PW-1 & accused Dilbor, the latter started to demand money for purchasing a vehicle and, since PW-2 could not meet the demand due to his poverty, beat PW-1. But, during cross-examination, PW-2 stated that he learnt about the demand & torture from PW-1 and added that he came to know about this case after filing of it. PW-1 has not stated anywhere that she reported the occurrence to PW-2, her father (PW-2). Therefore, the evidence of PW-2, so far as the alleged dowry-demand & torture are concerned, is hearsay and, hence, inadmissible in my considered opinion. It is interesting to note here that when

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assailed with the statement u/s 161 CrPC (u/s 145 of the Evidence Act read with Sec.162 CrPC), PW-2 did not deny that he did not state about the money-demand to the I.O. ; he tacitly avoided the subject by saying that he did not remember whether he had stated so whereas, he being the father of the alleged victim, had no reason to forget the reporting of her real allegations to the police if the allegations were true.

8. PW-3 deposed that three/four years after the marriage, accused Dilbor started asking PW-1 to bring money from her father and beat her ; some money was paid to him but he resumed his demand and ousted PW-1 after beating her severely. PW-3 also admitted during cross-examination that he did not see the alleged beating and that demand was not made in his presence. Therefore, his evidence is also inadmissible for the aforesaid reason.

9. The last occurrence of torture & dowry-demand, as the Complaint/Ejahaar (Ext.1) shows, took place on 01.9.07 on which date the informant-victim (PW-1) was allegedly ousted from her matrimonial home. The Complaint (now Ejahaar) was lodged on 05.9.07 i.e. after a delay of three days. To explain the delay, PW-1 claimed in her complaint that she had to undergo medical treatment. But she did not say a word about any medical treatment in her evidence.

10. Situated thus, I acquit the accused persons of the charge u/s 498(A)/34 IPC and direct that they be set at liberty forthwith. Their bail-bonds shall stand discharged on expiry of six months from today vide. the spirit of Sec.437-A CrPC.

Dictated & corrected by me and given under my hand and seal of the Court on this 10<sup>th</sup> Day of the Month of January in the Year 2014.

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Addl. Chief Judicial Magistrate,  
Dhubri : Assam