

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE : JORHAT.

PRESENT : **Md. Manwar Ali, M.A., LLB., A.J.S.,**
Chief Judicial Magistrate,
Jorhat.

For the prosecution Mrs. D.Hazarika, Addl.P.P.
For the defence Mr. A.R.Bora, Advocate.

Ref. : G.R.Case No. 857 of 2010.
State

-vs-

1) Tasil Gogoi and
2) Smti. Niru Gogoi Accused.

Under section 498(A)/34 of the I.P.C.

Charge framed on	.....	21.10.2010.
Evidence recorded on	.....	18.11.2010; 22.12.2010; 18.01.2011; 09.03.2011; 23.06.2011;
Statement recorded on	.....	05.08.2011.
Arguments heard on	.....	08.12.2011.
Judgment delivered on	.....	14.12.2011.

JUDGMENT

1. The prosecution initiated this case on receipt of an ejahar at Lichubari police outpost filed by one Srimati Runumi Kachari Gogoi, wife of Tasil Gogoi of Dakhin Hatichungi Gaon, under Jorhat police station, District Jorhat, alleging that in the year 2007, she got married with Sri Tasil Gogoi of Dakhin Hatichungi Gaon as per social rites and they were living as husband and wife. But after a few months of the said marriage, at the instigation of his sister-in-law Smti. Niru Gogoi, Tasil Gogoi started both physical and mental torture on her by demanding dowry articles and cash amount of money and on her failure to fulfil their demand for dowry from her parents, on 16.07.2010 at about 9.00/10.00 p.m. her husband Tasil Gogoi assaulted her and ousted her from his house.

2. The In-charge, Lichubari police outpost, on receipt of the above ejahar, after making G.D. Entry No. 301 dated 18.07.2010, forwarded the same to the Officer-in-charge of Jorhat police station, who on receipt of it, registered a case as Jorhat P.S.Case No. 413/2010, u/s 498(A)/34 of I.P.C. and Sri Padmeswar Saud, A.S.I. of police, was

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entrusted to take up the investigation of the instant case. After completion of the investigation, the I.O. submitted charge sheet against accused Sri Tasil Gogoi and Smti. Niru Gogoi u/s 498(A)/34 of I.P.C.

3. On appearance of the accused persons before the Court, the necessary copies were furnished to them u/s 207 of Cr.P.C. After hearing the learned counsel of both sides and perusal of the records, my learned predecessor found prima facie case u/s 498(A)/34 of I.P.C. and accordingly framed charge u/s 498(A) read with section 34 of I.P.C. against the accused persons. When the charge was read over and explained to the accused persons they pleaded not guilty and claimed to be tried.

4. The prosecution, in support of its case, examined as many as eight witnesses including the medical officer and the investigating officer. They were also subjected to lengthy cross-examination. However, the defence did not adduce any evidence. The statements of the accused were recorded u/s 313 Cr.P.C. The plea of the defence was nothing but an utter denial. I have also heard the arguments advanced by both sides.

POINTS FOR DETERMINATION :

5. (i) Whether accused Tasil Gogoi and Smti. Niru Gogoi, in furtherance of common intention of both of them, subjected Smti. Runumi Kachari Gogoi to cruelty demanding dowry as alleged on the relevant date and time and thereby committed offence u/s 498(A)/ 34 of I.C. ?

DISCUSSION, DECISION AND REASONS THEREOF :

6. P.W.1 Smti. Runumi Kachari Gogoi, the alleged victim, has deposed that accused Tasil Gogoi is her husband and accused Smti. Niru Gogoi is the sister-in-law of her husband. The marriage between herself and accused Tasil Gogoi was

solemnized on 6th Jaistha of the year 2007. After a few months of their marriage accused Tasil Gogoi, at the instigation of his sister-in-law Smti. Niru Gogoi (accused), subjected her to physical torture. Being unable to bear such torture, in the month of 'Aahar' she left the house of the accused and filed this case. She confirmed her ejahar

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Marked as Ext.1 with her signature marked as Ext.1(1). In her cross-examination P.W.1 stated that she left the house of her husband on 16.07.2010 and filed the ejahar on 18.07.2010 being accompanied by the Government 'Gaonburha', her father and her uncle Bogai Kachari. She did not write the ejahar herself. According to her, accused Smti. Niru Gogoi is a widow having one daughter aged about 19 years and one son aged about 18 years. P.W.1 denied the suggestions put by the defence to the effect that she has lodged this false case against the accused persons as her husband Tasil Gogoi maintains the family of accused Smti. Niru Gogoi.

7. P.W.2 Sri Ambu Ram Kachari has deposed that P.W.1 Runumi is his daughter and accused Tasil Gogoi is his son-in-law. After the marriage accused Tasil Gogoi subjected P.W.1 to various torture and hence, he brought back his daughter to his house. But he is unaware of the apple of discord between them. P.W.2 in his cross-examination denied the suggestions put to him by the defence.

8. P.W.3 Sri Bogai Kachari, paternal uncle of P.W.1 Runumi Kachari, has deposed that after the marriage, accused Tasil Gogoi used to assault Runumi Kachari and so they brought her back to their house with the help of police. He also does not know the reason of assaulting her. In his cross-examination P.W.3 also denied that this case was lodged on false allegation.

9. P.W.4 Sri Kamal Chandra Kachari is a Government Gaonburha. He has identified Runumi Kachari as the married wife of accused Tasil Gogoi. Prior to the incident of this case also, the accused assaulted Runumi Kachari on two occasions and he himself affected reconciliation between them. Runumi Kachari reported to

P.W.4 that the accused did not provide food to her and accused Tasil Gogoi has illicit relation with his sister-in-law Niru Gogoi. In the night of the incident of this case, though he was informed about the same by one Phuleswar Gogoi over telephone, he did not go to the house of the accused in that night and on the next day when he visited the house of the accused, Tasil Gogoi told P.W.4 that he would keep Runumi in his house no

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more. According to him, accused Niru Gogoi also took part in assaulting P.W.1 and then P.W.4 instructed Runumi to file case against the accused persons and he accompanied Runumi to the police station. During cross-examination P.W.4 denied all the suggestions put by the defence to him. However, he admitted that he did not witness the accused assaulting P.W.1 Runumi Kachari.

10. P.W.5 Shri Suren Gogoi stated that P.W.1 Runumi Kachari and accused Tasil Gogoi are wife and husband and now P.W.1 has left the house of the accused. A village meeting was convened to reconcile the dispute between P.W.1 and the accused but he did not know what was the reason of the difference between them. In his cross-examination he admitted that he did not witness any altercation taking place between the parties.

11. P.W.6 Smti. Mamoni Gogoi has stated that she knows both the parties. They are husband and wife and now P.W.1 Runumi Kachari lives in the house of her parents. She could not say why the village meeting was held.

12. P.W.7 Dr. Apurba Kumar Sarma, deposed that on 18.07.2010 he was posted at Baghchung P.H.C. as Senior Medical & Health Officer and on that at about 10-15 a.m., he examined one Smti. Runumi Kachari Gogoi on police requisition and on her examination he found :-

- (i) Bruise below the left eye, size ½ inch x ½ inch ;
- (ii) Multiple bruises over the left shoulder joint, size ½ inch x ½ inch;

(iii) Tenderness over the left temporal region of the scalp.

P.W.7 opined that the injuries were simple and caused by blunt object. The doctor confirmed his report marked as Ext.2 with his signature marked as Ext.2(1).

13. P.W.8 Shri Padmeswar Saud, A.S.I. of police, has stated that on 18.07.2010 he was posted at Lichubari police outpost. On that day, on receipt of one F.I.R. the In-charge of Lichubari police outpost forwarded the same to Jorhat police station for registration of a case and P.W.8 was entrusted with the investigation of this case.

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Accordingly, he recorded the statement of the informant at the police outpost and sent her for medical treatment. He also visited the place of occurrence, recorded the statements of other witnesses, arrested accused Tasil Gogoi and accused Niru Gogoi. After collecting the medical examination report of the informant and on completion of the investigation he submitted charge sheet against both accused Tasil Gogoi and Smti. Niru Gogoi u/s 498(A)/34 of I.P.C. P.W.8 has confirmed the charge sheet marked as Ext.3 with his signature marked as Ext.3(1). The defence declined to cross-examine P.W.8.

14. Section 498 A IPC deals with the offence of cruelty by a husband or a relative of a husband. "Cruelty", within the meaning of the said expression, as appearing in Section 498A IPC, must be with reference to some act on the part of the husband or a relative of the husband which is likely to drive the wife to commit suicide and/or which has potential to cause injury to her life, limb or health. Alternatively, such act on the part of the husband or the relative of the husband must cause harassment to the wife in order to coerce her to meet any unlawful demand or on account of her failure to meet any such demand.

15. It may be noted, at this stage, that witnesses fall in three distinct categories. There are witnesses, who are wholly reliable. Conviction of an accused can be safely based on the evidence of a witness, who is wholly reliable. There may be witnesses, who are found to be wholly unreliable. The evidence of such witnesses

are to be completely discarded. There is yet another category of witnesses, who may be neither wholly reliable nor wholly unreliable. Before the evidence of such a witness is relied upon to convict an accused, imperative it is that the court is satisfied that the evidence of such witness has been corroborated by trustworthy and reliable evidence; such corroborative evidence may be either direct or circumstantial. In short, the evidence of a witness, who is neither wholly reliable nor wholly unreliable, cannot be relied upon for the purpose of founding conviction of an accused without

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corroboration thereof, either direct or circumstantial.

16. In a criminal case mere suspicion is not enough to convict an accused, as the degree of proof required is strict than the civil proceedings. By this time it is also settled that the criminal trial is meant for doing justice to the accused, the victim and the society, so that the law and order is maintained. Court should not search the evidence of the prosecution witnesses only to punish the accused person for the charges leveled against him. It is also the duty of the court to find out whether the accused is really involved and/or connected with the offence for which charge is leveled against him. As the duty of the court is to see that no innocent person should be punished as well as no guilty person should be escaped without punishment. The first one is as important as the latter one. Both are important for the court while performing its duties either under the Constitution or under the law.

17. If an innocent is punished as a wrongdoer, peoples' faith, in the rule of law, may get shaken. If, however, wrongdoers escape, as a matter of routine people's faith, in the rule of law, may get completely eroded.

18. The word 'cruelty' under Section 498A IPC within explanation (a) covers 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. No such material has been found to hold that the

accused conducted in such a manner which has compelled the complainant to commit suicide. The complainant was never found to have been tortured physically or mentally or she was ever driven out from the house of the accused. There is no evidence to the effect that she was kept in starvation or under some condition causing danger to her life, limb or health. Again, as per explanation (b) cruelty would mean 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

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demand. As already discussed earlier, there is no evidence of torture/demand or some lawful demand or claim for any property or any valuable security from the parents of the complainant.

19. The Hon'ble Apex Court in the case of State of Haryana -vs- Surendar and others, AIR 2007 SC 2312 observed that -

'The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented.'

20. In view of the discussion set forth above, and after careful appreciation of the evidence on record, I find that the prosecution/ complainant has failed to establish the charge u/s 498 A of the IPC against the accused persons beyond all reasonable doubt. The ingredients of offence U/s 498 A of the IPC has also not been proved against the accused person and as such, the accused persons Tasil Gogoi and Smti. Niru Gogoi are acquitted from the charge U/s 498 A of the I.P.C. on the ground

of benefit of doubt and set them at liberty forthwith. The bailor is discharged from the liabilities.

21. Given under my hand and seal of the Court, on this 14th day of December, 2011, at Jorhat.

Magistrate,

Chief Judicial
Jorhat.

Dictated & corrected by me :

Chief Judicial Magistrate,
Jorhat.

Transcribed & typed by :

P.K.Bora,
Stenographer.