

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

G.R. CASE NO.78/2017

State

Vs.

- 1. Md. Abdul Gofur
Son of Md. Mesor Ali**
- 2. Musstt. Rubela Khatun
Wife of Md. Abdul Gofur**
- 3. Md. Anar Hussain
Son of Md. Abdul Gofur**
- 4. Md. Iman Hussain
Son of Md. Abdul Gofur**
- 5. Md. Zakir Hussain
Son of Md. Abdul Gofur
All are residents of village: Sagunbahi
P.S.- Moirabari,
District- Morigaon, Assam**

Present: Sri N.K. Das, AJS
Chief Judicial Magistrate, Morigaon

For the state: Mrs. A. Kakati, Addl. P.P.
For the defense: Md. M. Rahman, Advocate

Charge framed: u/s 498A/34 of IPC
Evidence recorded on: 13-11-2019
Argument heard on: 13-11-2019
Judgment delivered on: 13-11-2019

JUDGMENT

1. The prosecution case in brief is that one Musstt. Mamoni Begum lodged a complaint in the court of Chief Judicial Magistrate, Morigaon against the accused persons namely Md. Anar Hussain, Musstt. Rubela Khatun, Md. Abdul Gofur, Md. Iman Hussain and Md. Zakir Hussain alleging therein that accused Md. Anar Hussain is her husband and the remaining accused persons are family members of her husband. Around three years prior to filing of the complaint, her marriage

was solemnized with accused Md. Anar Hussain as per Islamic rites on fixing Rs.75,000/-, as Mohr amount. Out of the wedlock a son was born, who was aged about 1½ years at the time of filing of the complaint. At the time of marriage, her father sold land and with the proceed of the sale paid dowry articles and Rs.50,000/-, in cash, and other articles to her husband. After marriage, her husband accused Md. Anar Hussain, with the assistance of the remaining accused persons did not purchase any furniture but spent the cash amount in frivolous works. Thereafter, her husband, at the instigation of other accused persons, again demanded dowry of Rs.1,00,000/- and coerced her to bring the said amount from her poor father. However, due to extreme poverty of her father, she could not bring the said amount and on her failure to meet the demand of the accused persons, they became hostile to her and out of grudge subjected her to inhuman physical and mental torture, harassment and beating. Though the complainant went on tolerating all such harassment; however, on 17-11-2016, the aforesaid accused persons beat the complainant severely and drove her, along with her child out of the matrimonial house. Having no other alternative, she took shelter in the house of her poor father. There was some delay in lodging the ejarah as she was waiting for an amicable settlement of the matter.

2. The said complaint was forwarded to the Officer-in-Charge of Moirabari police station on 22-12-2016 for investigation and submission of report under section 173 CrPC, as per prayer of the complainant. Accordingly, the complaint was received in the Moirabari police station on 4-1-2017 and a Moirabari police station case No.12/2017 under sections 498A/323/109/34 IPC was registered and one sub inspector of police Md. Musfic Ali was assigned to investigate the case by the Officer-in-Charge of the said police station. On completion of investigation police submitted charge sheet against the accused persons namely Md. Abdul Gofur, Musstt. Rubela Khatun, Md. Anar Hussain, Md. Iman Hussain and Md. Zakir Hussain, showing the last mentioned three accused persons as absconders, under sections 498A/34 IPC.

3. On appearance before court copies of all relevant documents were furnished to the accused persons under section 207 CrPC. After hearing both sides, after perusing case record and on prima facie materials of offence under

sections 498A/34 IPC being found against the above mentioned accused persons, formal charge under section 498A/34 IPC was framed, which was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

4. Prosecution in support of its case examined 1 (one) witness namely Musstt Mariyam Nessa @ Mamoni Begum, as PW-1, who is the informant as well as alleged victim of the case. The ejahar is exhibited as exhibit-1 and the informant put her thumb impression on the ejahar. Examination of the accused persons under section 313 CrPC was dispensed with for lack of incriminating materials. Defense side refused to adduce any evidence.

5. I have heard the argument of Mrs. Alakananda Kakati, learned APP as well as the argument of Md. Mehbubur Rahman, learned defence counsel. I have also perused the case record and considered the same. The sole point for determination is as under:

- i. Whether the accused persons, being on or about 17-11-2016, at village Sagunbahi, under Moirabari police station of Morigaon district and also on other dates, in furtherance of their common intention, subjected Musstt. Mamoni Begum, who is wife of Md. Anar Hussain, to cruelty by a willful conduct which was of such a nature as is likely to drive her to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the said woman; or harassed her 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 by any person related to her to meet such demand and thereby committed an offence punishable under section 498A/34 of IPC?

Discussion of evidence, decision and reasons therefor:

6. The witness Musstt Mariyam Nessa @ Mamoni Begum, who is the informant cum alleged victim, as PW-1, in her deposition, has not supported her own case and did not implicate the accused persons with the alleged offence. The witness deposed that the matter has already been amicably settled amongst

them at the intervention of their local villagers. At present she has been living with her husband i.e. the accused Md. Anar Hussain and leading conjugal life with him. According to the witness, she no longer wants to proceed with the case and the case was filed due to misunderstanding.

7. It is seen that there is absolutely nothing on record against the accused persons to implicate them with the alleged offence. The key witness did not implicate the accused persons with the alleged offence. There is no mention of any torture or harassment in the evidence of the witness. In view of the deposition of the witness, the prosecution side did not proceed further to summon and examine the remaining witnesses as their evidence is not likely to improve the prosecution case and closed the prosecution evidence and perhaps rightly so.

8. For the aforesaid reasons and discussion the sole point for determination is answered in the negative.

9. The prosecution has failed to prove the case against the accused persons. As such, the accused persons are found not guilty and accordingly acquitted of offence under section 498A/34 IPC alleged against them. They be set at liberty forthwith. Their bail bonds shall remain in force for six months from today in view of section 437A of CrPC.

10. The judgment is pronounced in open court and given under my hand and seal on this 13th day of November, 2019 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

APPENDIX

- (A) PROSECUTION EXHIBITS:**
Ext.-1: Ejahar
- (B) DEFENCE EXHIBITS**
None
- (C) EXHIBITS PRODUCED BY WITNESSES**
None
- (D) COURT EXHIBITS**
None
- (E) PROSECUTION WITNESSES**
P.W.-1: Musstt Mariyam Nessa @ Mamoni Begum
- (F) DEFENCE WITNESSES**
None
- (G) COURT WITNESSES**
None

Chief Judicial Magistrate, Morigaon