

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

G.R. CASE NO.452/2015

State

Vs.

**Md. Mohibur Rahman
Son of Md. Abu Bakkar Siddique
Resident of village- Jaribar
P.S.-Bhuragaon
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. B.H. Talukdar, Advocate

Charge framed: u/s 498A of IPC

Evidence recorded on: 6-11-2019

Statement of defense recorded on: 6-11-2019

Argument heard on: 6-11-2019

Judgment delivered on: 8-11-2019

JUDGMENT

1. The prosecution case in brief is that one Musstt. Monjuma Begum lodged an ejahar in the Bhuragaon police station against the accused persons namely Md. Khalilur Rahman, Musstt. Hasnara Begum and Md. Mohibur Rahman alleging therein that accused Md. Khalilur Rahman is her husband and around four year prior to lodging of the ejahar, he introduced himself as an unmarried youth and by giving her various false promises, he caused her to elope with him and brought her to his house at Morigaon district and kept her as his wife. When she came to the house of the accused persons, she came to know that accused Musstt. Hasnara Begum is the first wife of the accused of Md. Khalilur Rahman. Subsequently, accused Md. Khalilur Rahman fathered a 14 months old son with the informant. After some days of the marriage, at the instigation and assistance

of accused Musstt. Hasnara Begum and Md. Mohibur Rahman, accused Md. Khalilur Rahman demanded dowry, money etc. from her and in connection with such demand used to subject her to various harassment. When such harassment of the accused persons became unbearable, she returned to the house of her parents while she was carrying three months pregnancy.

2. On 22-2-2015, the accused Md. Khalilur Rahman came to the house of her parents and promised her family members not to harass her again and with many requests, brought her again to his house. However, on 25-2-2015 at about 10.00 p.m., the accused persons confined her inside a room of their house and by hatching a conspiracy, abused her with foul language, restrained her and mercilessly inflicted fist blows and kicks etc. on her causing severe internal injuries. Accused Md. Khalilur Rahman, in order to kill her, tried to pour kerosene oil on her. However, the informant somehow saved herself. Therefore, on 26-2-2015, by taking an opportunity, she returned from the house of the accused persons to the house of her parents with her child.

3. The ejahar was received in the Bhuragaon police station on 3-3-2015 and a Bhuragaon police station case no.36/2015 under section 498A/34 of IPC was registered and one sub inspector of police Sri Anthony Rongpi was assigned to investigate the case by the Officer in charge of Bhuragaon police station. On completion of investigation, police submitted charge sheet against the accused Md. Khalilur Rahman and Md. Mohibur Rahman under sections 498A/34 of IPC.

4. Though accused Md. Mohibur Rahman appeared in court however, in spite of exhausting all processes to procure the presence of accused Md. Khalilur Rahman, the process executing agency could not produce him before the court for which the case against him was filed on 29-3-2018 pending execution of the NBWA against him. The case against the accused Md. Khalilur Rahman was filed vide order dated 29-3-2018 pending execution of the NBWA and the case proceeded against the accused Md. Mohibur Rahman alone.

5. On appearance before court, copies of all relevant documents were furnished to the accused Md. Mohibur Rahman under section 207 CrPC. After hearing both sides, after perusing case record and on prima facie materials of offence under section 498A IPC being found against the above mentioned

accused person, formal charge under section 498A IPC was framed, which was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

6. Prosecution in support of its case examined 1 (one) witness namely Musstt. Manjuara Begum @ Manjuma Begum, as PW-1, who is the informant cum alleged victim of the case. Another witness namely Md. Mainul Hoque, who was the elder brother of the alleged victim and who accompanied her to court was also examined as a court witness (CW-1) as his evidence was deemed necessary for a just decision of the case. The ejahar is exhibited as exhibit-1 and the signature of the informant is proved as exhibit-1(1). While under examination under section 313 CrPC the accused person completely denied the allegations leveled against him. Defense side refused to adduce any evidence.

7. I have heard the argument of Mrs. Alakananda Kakati, learned APP as well as the argument of Md. Basirul Hoque Talukdar, 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 person, on or about 25-2-2015 at about 10.00 p.m., at village Jaribar (near Ouguri Bazar), under Bhuragaon police station of Morigaon district and also on other dates, subjected Musstt. Manjuma Begum, who is wife of Md. Khalilur Rahman, 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 of IPC?

Discussion of evidence, decision and reasons therefor:

8. The informant Musstt. Manjuwara Begum @ Manjuma Begum deposed before the court as PW-1. Her ejahar is proved as exhibit-1 and her signature

thereon is proved as exhibit-1(1). She only partially corroborated her ejahar so far as the fact that her husband i.e. accused Md. Khalilur Rahman already had a wife and children. She further stated that two accused persons Md. Khalilur Rahman and Md. Mohibur Rahman used to quarrel and beat her for which she returned to her mother's house. She also stated that when her third child was 1 ½ years old, they beat her. Therefore, she returned to her house by fleeing from the house of the accused persons, after which this case was lodged. She further stated that the two accused persons beat her in connection with demand of money. Though she gave the articles given to her at the time of her marriage to the accused; however, they again demanded other goods and in connection with the said demand beat her.

9. Her aforementioned deposition did not include the incident of 25-2-2015. Further, there is also no mention regarding the fact that her husband tried to pour kerosene oil on her though she stated the same in her ejahar. Moreover, though she implicated accused Musstt. Hasnara Begum in her ejahar; however, there is nothing against the accused Musstt. Hasnara Begum in her deposition which goes to show that Musstt. Hasnara Begum was implicated unnecessarily in her ejahar. This fact, along with her omission to indicate the alleged occurrence of 25-2-2015, shows that the said PW did not corroborate the material allegation against the accused persons. While under cross-examination, she has stated that she already amicably settled the matter with the accused persons at the intervention of her villagers. It is also revealed in her cross-examination that as the ejahar was not read over to her she has no knowledge as to what was written therein. Further, it is also revealed that she was not examined by doctor and she deposed before the court against the accused persons because of misunderstanding.

10. The fact of amicable settlement of the matter is also supported and reiterated by CW-1 Md. Mainul Hoque, who is the elder brother of the Musstt. Manjuma Begum. It may be indicated herein that the said PW-1 has deposed that her parents had already died.

11. Therefore, the variation between the examination-in-chief given by PW-1 and the deposition given in cross-examination creates doubt regarding the

prosecution story. It appears that after recording of her examination-in-chief, she amicably settled the matter with the accused person for which she subsequently stated regarding the amicable settlement. Her deposition along with the deposition of CW-1 dented the prosecution story. In view of her deposition prosecution side also 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 evidence and perhaps rightly so.

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

13. The prosecution has failed to prove the case against the accused person. As such, the accused person is found not guilty and accordingly acquitted of offence under section 498A IPC alleged against him. He be set at liberty forthwith. His bail bond shall remain in force for six months from today in view of section 437A of CrPC.

14. The judgment is pronounced in open court and given under my hand and seal on this 8th day of November, 2019 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

APPENDIX

(A) PROSECUTION EXHIBITS:

Ext.-1: Ejahar

Ext.-1(1): Signature of Musstt. Manjuwara Begum @ Manjuma Begum

(B) DEFENCE EXHIBITS

None

(C) EXHIBITS PRODUCED BY WITNESSES

None

(D) COURT EXHIBITS

None

(E) PROSECUTION WITNESSES

P.W.-1: Musstt. Manjuwara Begum @ Manjuma Begum

(F) DEFENCE WITNESSES

None

(G) COURT WITNESSES

C.W.-1: Md. Mainul Hoque

Chief Judicial Magistrate, Morigaon