

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

G.R. CASE NO.908/2013

State

Vs.

- 1. Sri Paresh Mandal
Son of late Sarat Mandal**
- 2. Sri Sanatan Mandal
Son of Sri Paresh Mandal**
- 3. Smti. Ramani Mandal
Wife of Sri Nipen Mandal
All are residents of village: Boralimari
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: Mr. H. Kr. Bora, Advocate

Charge framed: u/s 498A/34 of IPC
Evidence recorded on: 20-3-2015, 28-2-2017, 18-1-2018, 1-9-2018
& 3-10-2018
Statement of defence recorded on: 24-10-2019
Argument heard on: 24-10-2019
Judgment delivered on: 7-11-2019

JUDGMENT

1. The prosecution case in brief is that one Smti Bhagya Mandal lodged a complaint in the court of Chief Judicial Magistrate, Morigaon against the accused persons namely Sri Haradhan Mandal, Sri Paresh Mandal, Sri Sanatan Mandal and Smti. Ramani Mandal alleging therein that around two years prior to lodging of the complaint, the marriage of the complainant was solemnized with the accused Sri Haradhan Mandal, as per Hindu rites. At the time of the marriage, her father gave sufficient dowry to her. The conjugal life between them went well for about one year. Out of the wedlock a daughter was born, who was aged about one

year at the time of filing of the complaint and was named as Miss Pusti Mandal. After the birth of the daughter, at the instigation of the accused Sri Paresh Mandal, Sri Sanatan Mandal and Smti. Ramani Mandal, accused Sri Haradhan Mandal used to demand more dowry and Rs.50,000/-, in cash, and coerced her to bring the said amount from her father. In connection with such demand, he also subjected the complainant to various physical and mental harassment. On her failure to bring the money as demanded by the accused persons from her poor father, the accused Sri Paresh Mandal, Sri Sanatan Mandal and Smti. Ramani Mandal treated her as a servant and forced her to do various works for the entire day and thereby subjected her to physical hardship.

2. Moreover, occasionally, the complainant was deprived of food thereby starved her and caused hardship to her daughter. The accused persons do not allow her to take proper food, forbid her from entering into the kitchen and thereby kept her starved and also forbid her from taking care and providing food etc. to her child. As a result thereof, the physical and mental condition of the complainant and her daughter deteriorated. As the complainant could not meet the repeated demands of the accused persons to bring the money, they forced her to do physical labour and kept her away from her daughter. They also prevented her from breast feeding her daughter even if the child cries in hunger. If the complainant tries to feed her daughter, the accused persons threaten to kill her and her daughter by strangulating them.

3. On her failure to bring Rs.50,000/-, as demanded by the accused persons, on 14-6-2013 at about 3.00 p.m., at the instruction of accused Sri Paresh Mandal and Sri Sanatan Mandal, the accused Sri Haradhan Mandal and Smti. Ramani Mandal abused the complainant with foul language, inflicted slaps, fist blows, lathi blows etc. on her and severely beat her causing severe injuries on her leg, chest, upper back etc. and thereafter drove her and her one year old daughter out of the house of Sri Haradhan Mandal by catching hold of her hair. They also threatened that she should not return without bringing the Rs.50,000/- and if she returns without the money, they would kill her as well her daughter. Having no other alternative, the complainant along with her daughter returned to the house of her father and took shelter therein. Due to the beating by the accused

persons, she sustained severe injuries and also suffered fever and vomiting for which her father provided medical treatment to her at Jhargaon PHC. Therefore, she prayed for causing an investigation through police of Bhuragaon police station and take necessary action against the accused persons. It was also indicated in her ejahar that due to medical treatment, there was some delay in lodging the ejahar.

4. The said complaint was forwarded to the Officer-in-Charge of Bhuragaon police station on 24-6-2013, for registration, investigation and submission of report under section 173 CrPC, as per prayer of the complainant. Accordingly, the complaint was received at the Bhuragaon police station on 15-7-2013 and a Bhuragaon police station case No.44/2013 under sections 498A/325/506/34 IPC was registered and one sub inspector of police Sri Prabin Saikia was assigned to investigate the case by the Officer-in-Charge of the Bhuragaon police station. On completion of investigation police submitted charge sheet against the aforementioned accused persons under section 498A IPC showing them as absconders.

5. 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 sections 498A/34 IPC was framed, which was read over and explained to the aforementioned four accused persons to which they pleaded not guilty and claimed to be tried.

6. During recording of evidence accused Sri Haradhan Mandal stopped appearing before the court for which the case was filed against him vide order dated 13-5-2016 and the case proceeded against the remaining three accused persons.

7. Prosecution in support of its case examined 7 (seven) witnesses namely Smti. Bhagya Mandal, Sri Gopinath Biswas, Sri Indramohan Biswas, Sri Sushil Biswas, Md. Riazuddin Ahmed, Dr. Prasanta Kumar Khound and Sri Umesh Biswas, as PW-1, PW-2, PW-3, PW-4, PW-5, PW-6 and PW-7, respectively. The prosecution also exhibited 1 (one) document i.e. the injury report. While under

examination under section 313 CrPC the accused persons denied the allegations leveled against them. Defense side refused to adduce any evidence.

8. I have heard the argument of Mrs. Alakananda Kakati, learned APP as well as the argument of Mr Hiranya Kr. Bora, 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, on 14-6-2013, at village Boralimari under Bhuragaon police station, of Morigaon district and also on other dates, in furtherance of their common intention, subjected Smti. Bhagya Mandal, who is the wife of Sri Haradhan Mandal, 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 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 read with section 34 of the Indian Penal Code?

Discussion of evidence, decision and reasons therefor:

9. The informant Smti Bhagya Mandal @ Subhagya Mandal deposed before court as PW-1. In her deposition she stated that after three years of the marriage, her husband i.e. accused Sri Haradhan Mandal, at the instigation of other accused persons, assaulted her for demand of money and as she could not give the money, the accused persons assaulted her and drove her away from their house. Though she implicated all the accused persons of beating her and demanding the money; however, in her deposition, she did not implicate the other accused persons except her husband of beating her and demanding money. The only allegation against the other accused persons, as per her deposition, is that they instigated her husband to do so. Therefore, her ejahar, so far as the accusation against the other accused persons are concerned, is not corroborated by her in her deposition. Further, though in her ejahar, which was left un

exhibited due to putting of thumb impression by the informant, she detailed the nature of harassment, as already indicated above. However, while deposing in court, she only stated that her husband assaulted her for money and drove her away from the house of the accused persons. Therefore, the detailed narration as indicated by her in her ejahar was not reiterated and repeated in her deposition. The nature of the harassment, as detailed by her in her ejahar, are material and therefore, omission by her to mention the same in her deposition is material omission. It is also noticed that as per the ejahar, she was mercilessly beaten and driven out of the house of the accused person on 14-6-2013. However, the complaint was lodged on 24-6-2013 i.e. after 9 (nine) days. It is indicated by her that due to her medical treatment, there was delay in lodging the ejahar.

10. The medical officer Dr. Prasanta Kumar Khound deposed before the court as PW-6. He prepared the exhibit-1 injury report wherein he confirmed his signature as exhibit-1(1). From his deposition we have found that he examined Smti Soubhagya Mandal (Bhagya) i.e. the informant at Jhargaon PHC on 20.6.2013 at about 11.55 a.m. and found the following:

- i. Right foreleg tender and swelling.
- ii. Chest congested.
- iii. Upper back tender and swelling.
- iv. Lumber region tender.
- v. Vomitting.
- vi. Blood Pressure 100/60 mmhg.

11. It was also indicated in the injury report that the injuries were of recent origin (18 to 20 hours old). This finding of the medical officer would go to show that the said injuries were received by her in the evening of 19-6-2013 as admitted by the said medical officer in his cross-examination. Apart from the fact that the informant Smti Bhagya Mandal sought and obtained medical intervention after about six days of the date of occurrence, as indicated by her in her ejahar. There is no indication by her in her deposition as to why she awaited six days to obtain medical treatment if she received the injuries as narrated by her on 14-6-

2013. Therefore, her narration regarding the time when she received injuries and the finding of PW-6 does not corroborate each other.

12. This discrepancy, therefore, creates doubt as to whether the injuries as narrated by her in her ejahar and the injuries found by the doctor on 20-6-2013 were caused on 14-6-2013, as indicated by her in her ejahar. For this same reason, the explanation given by her in her ejahar that the delay in filing the complaint was caused for her medical treatment also appears to be not sufficient, in view of the fact that she did not take any medical treatment for six days and also did not approach the court during that period. Therefore, since she obtained medical intervention only on 20-6-2013; hence, her medical treatment in no way prevented her to approach the court. Therefore, the delay of filing the complainant in court on 24-6-2013 when the occurrence itself was allegedly caused on 14-6-2013, appears to be inordinate delay. Such delay in lodging the complaint afforded sufficient time to the complainant to deliberate as to how the ejahar should be lodged and against whom the ejahar should be lodged. Such delay also robbed the ejahar of its spontaneity.

13. Though she stated that it was only her husband, who, at the instigation of other accused persons, assaulted her and drove her out of the matrimonial house, however, her father Shri Gopinath Biswas, who deposed as PW-2, implicated all the accused persons of assaulting and beating his daughter in connection with demand of Rs.50,000/-. It may be mentioned here that PW-1 herself did not indicated anything regarding demand of Rs.50,000/-, it was only stated that money was demanded by her husband. Her father also stated that she was beaten on 14-6-2013 at night and was kept at Kalikajari where the accused persons have a farm. We have already found from the ejahar that the informant herself wrote in the ejahar that she was allegedly beaten on 14-6-2013 at about 3.00 p.m. Therefore, so far as the time of the alleged beating is concerned, there is a difference between what the PW-1 wrote in her ejahar and what her father, as PW-2, has stated in his deposition.

14. In the cross-examination PW-1, it was elicited that after three months of the marriage, she resided separately with her husband in another house. This

admitted fact by PW-1 is however, contradicted by PW-2 in his cross-examination wherein he denied the suggestion that his son-in-law along with his daughter resided separately from the other family members of his family. This creates doubt whether the other accused persons were involved in the occurrence or not. It is more so, in view of the fact that the informant herself as PW-1 did not implicate the other accused persons of any overt act except instigating her husband.

15. PW-3 Shri Indramohan Biswas stated in his deposition that it was the husband who demanded Rs.50,000/- from Smti. Bhagya Mandal and she was beaten sometimes as she failed to meet the said demand. This narration given by PW-3 was given on the basis of what he heard from others. He admitted that he was not present at the time of such demand or at the time of such assault by the husband of Smti. Bhagya Mandal. Moreover he also admitted that on 14-6-2013 he was not present at the place of occurrence. It is also indicted by PW-3 in his cross-examination that on being driven out the woman i.e. Smti. Bhagya Mandal came to the house of her father on her own. This statement is contradicted by PW-2 who stated in his deposition that, he, on the next day of 14-6-2013, went to Kalikajari at 7.00 a.m. and brought her daughter to his own house. Therefore, it appears that PW-3 stated a fact which he has no clear knowledge. The PW-3 further stated that he heard that the informant i.e. Smti. Bhagya Mandal along with her husband lived separately at Kalikajari. This deposition, though hearsay, however, in view of the fact that the said fact was admitted by informant herself, is found to be true.

16. PW-4 Sri Sushil Biswas and PW-5 Md. Riazudding Ahmed has no knowledge of the occurrence. PW-5 only stated that the informant has been residing in the house of her father at present. But he did not hear any quarrel at the house of her husband. We have already indicated the deposition of PW-6 Dr. Prasanta Kumar Khound.

17. PW-7 Umesh Biswas is the brother-in-law of accused Md. Haradhan Biswas. According to him, accused Sri Haradhan Biswas went for cultivation in the house of his father-in-law and after his return this false case was filed. The

informant did not return with Sri Haradhan Mandal. His cross-examination was declined.

18. Therefore, in order to find guilt of the accused persons, we only have the evidence of PW-1, PW-2, PW-3 and PW-6. We have already found that the evidence of PW-1, PW-2, PW-3 and PW-6 did not give us a clear picture as to what happened and how it happened and created doubt regarding the prosecution story itself. Further, the medical finding by the doctor also contradicted the oral evidence of PW-1 and PW-2. Remaining witnesses were not of any help in order to come to a conclusion regarding the guilty of the accused persons. In view of the deposition of the witnesses the prosecution also did not proceed further to summon and examine the remaining official witnesses, who are the investigating officers of the case, as their evidence is not likely to improve the prosecution case, and closed the evidence, and perhaps rightly so.

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

20. The prosecution has failed to prove the case against the accused persons beyond all reasonable doubt. As such, the accused persons are found not guilty and accordingly acquitted of offence under sections 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.

21. The judgment is pronounced in open court and given under my hand and seal on this 7th day of November, 2019 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

APPENDIX

- (A) PROSECUTION EXHIBITS:**
Ext.-1: Injury Report
Ext.-1(1): Signature of Dr. Prasanta Kumar Khound
- (B) DEFENCE EXHIBITS**
None
- (C) EXHIBITS PRODUCED BY WITNESSES**
None
- (D) COURT EXHIBITS**
None
- (E) PROSECUTION WITNESSES**
P.W.-1: Smti. Bhaigya Mandal
P.W.-2: Sri Gopinath Biswas
P.W.-3: Sri Indramohan Biswas
P.W.-4: Sri Sushil Biswas
P.W.-5: Md. Riyazuddin Ahmed
P.W.-6: Dr. Prasanta Kumar Khound
P.W.-7: Sri Umesh Biswas
- (F) DEFENCE WITNESSES**
None
- (G) COURT WITNESSES**
None

Chief Judicial Magistrate, Morigaon