

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

G.R. CASE NO.1473/2016

State

Vs.

**Md. Diluwar Hussain
Son of Md. Aroj Ali
Resident of village: Mirikamari
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. A. Shahnawaj, Advocate

Charge framed: u/s 498A of IPC

Evidence recorded on: 25-10-2019

Argument heard on: 25-10-2019

Judgment delivered on: 29-10-2019

JUDGMENT

1. The prosecution case in brief is that one Md. Hasen Ali lodged an ejahar in the Bhuragaon police station against the accused persons namely Md. Diluwar Hussain and Md. Aroj Ali alleging therein that the marriage of Musstt. Arifa Khatun, who is the niece of the aforementioned informant, was solemnized with the accused Md. Diluwar Hussain, as per social rites, around five years prior to lodging of the ejahar. Out of wedlock a boy child was born. Soon after the marriage, her husband subjected her to beating and physical and mental harassment in connection with demand of dowry. On 6-6-2016, her husband again beat her in connection with demand of dowry and drove her out of the matrimonial house to the house of her father at Rupahibeel. When she fell ill, her family members took her to Nagaon A.J. Nursing Home for medical treatment and at the time of lodging of the ejahar, she was under medical treatment. When the said matter was informant to the family members of her husband, her husband and the accused Md. Aroj Ali intimidated the informant.

2. The said ejahar was received in the Bhuragaon police station on 19-6-2016 and a Bhuragaon police station case No.87/2016 under section 498A of IPC was registered and one sub inspector of police Sri Julan Kalita 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 Md. Diluwar Hussain under sections 498A of IPC.

3. On appearance before court copies of all relevant documents were furnished to the accused person 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 Md. Diluwar Hussain to which he pleaded not guilty and claimed to be tried.

4. Prosecution in support of its case examined 2 (two) witnesses namely Md. Hussain Ali, as PW-1, who is the informant of the case and one Musstt. Arifa Khatun, who is the alleged victim, as PW-2. The ejahar is exhibited as exhibit-1 and the signature of the informant is proved as exhibit-1(1). Examination of the accused person under section 313 CrPC was dispensed with for lack 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 Albert Shahnawaj, 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, being the husband of Musstt. Arifa Khatun, on or about 6-6-2016, and also on other dates, at village Mirikamari, under Bhuragaon police station of Morigaon district, subjected her 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:

6. The witnesses in their deposition have not supported their own case and did not implicate the accused person with the offence charged. The witnesses deposed that the matter has already been amicably settled at the intervention of the local villagers. The witnesses further stated that at present the victim woman has been living with her husband, i.e. the accused. According to the witnesses, the case was filed due to misunderstanding and as such, they no longer want to proceed with the case.

7. It is seen that there is absolutely nothing in the evidence of witnesses against the accused person to implicate him with the alleged offence. The key witnesses who are the informant and the alleged victim of the case did not implicate the accused person with the alleged offence. There is no mention of any torture or harassment in the evidence of the witnesses. In view of the deposition of the witnesses, 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 reason and discussion the sole point for determination is answered in the negative.

9. 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.

10. The judgment is pronounced in open court and given under my hand and seal on this 29th day of October, 2019 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

APPENDIX

- (A) PROSECUTION EXHIBITS:**
Ext.-1: Ejahar
Ext.-1(1): Signature of Md. Hussain Ali
- (B) DEFENCE EXHIBITS**
None
- (C) EXHIBITS PRODUCED BY WITNESSES**
None
- (D) COURT EXHIBITS**
None
- (E) PROSECUTION WITNESSES**
P.W.-1: Md. Hussain Ali
P.W.-2: Musstt. Arifa Khatun
- (F) DEFENCE WITNESSES**
None
- (G) COURT WITNESSES**
None

Chief Judicial Magistrate, Morigaon