

DISTRICT: MORIGAON

IN THE COURT OF ADDL. CHIEF JUDL. MAGISTRATE,

MORIGAON::::::::::ASSAM.

GR Case No. 1724 of 2014

U/S 498(A)/341/323/34 of IPC.

PROSECUTOR: STATE OF ASSAM

-VS.-

ACCUSED: (I) Md. ALTAB SIKDAR @ HUSSAIN.

(II) MD. IBRAHIM SIKDAR.

(III) MD. NURUL AMIN SIKDAR.

(IV) MUSSTT. SAHARBANU BEGUM.

(V) MUSSTT. SARUFA BEGUM.

(VI) MD. SOHIDUL SIKDAR.

(VII) MD. SAMSUL SIKDAR.

Present : Smti. S. Acharyya, AJS,
Addl. Chief Judicial Magistrate,
Morigaon.

APPEARANCE:

For the State : Mr. P. Hazarika, Learned Addl. Public Prosecutor.

For the accused persons : Mr. B. Bordoloi, Learned Advocate.

Charge framed on : 04.07.2015.

Evidence recorded on : 04.08.2015, 31.08.2015, 16.10.2017 & 16.05.2019.

Argument heard on : 26.08.2019, 09.09.2019, 23.09.2019 & 30.09.2019

Judgment delivered on : 11.10.2019.

J U D G M E N T

1. The prosecution case in brief is that the informant Miss Anjuma Begum lodged an ejahar stating inter alia that she got married with Altab Sikdar at about ten years back as per Muslim rites and customs. On 19.6.2014 her husband assaulted and drove her out from her matrimonial home. That on 27.8.2014, at about 3.00 PM, when she had gone to her matrimonial house to

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meet her child, then her husband Md. Altab Sikdar and the other accused persons Md. Ibrahim Sikdar, Md. Samsul Sikdar, Md. Sahidul Sikdar, Musstt. Saharbanu Begum, Musstt. Sarufa Begum and Md. Nurul Amin Sikdar restrained her and assaulted her and snatched away her golden ornament. Hence the case.

2. On receipt of the 'ejahar' at the police station, the same was registered as Dharamtul P.S. Case No. 90/2014 and the matter was investigated upon.

3. After completion of investigation police filed a charge-sheet against the accused persons, (i) Md. Ibrahim Sikdar, (ii) Md. Samsul Sikdar, (iii) Md. Sahidul Sikdar, (iv) Musstt. Saharbanu Begum, (v) Musstt. Sarufa Begum and (vi) Md. Nurul Amin Sikdar under section 341/323/34 IPC and charge-sheet against the accused person Md. Altab Sikdar under section 498(A)/494/384 IPC.

4. On appearance of the accused persons they were allowed to go on bail. Relevant documents of the case was furnished to them. On perusal of record and after hearing both sides, charge under section 498(A) IPC has been framed against accused Md. Altab Sikdar and charge under section 341/323/34 IPC has been framed against accused persons Altab Sikdar @ Hussain, Md. Ibrahim Sikdar, Md. Samsul Sikdar, Md. Sahidul Sikdar, Musstt. Saharbanu Begum, Musstt. Sarufa Begum and Md. Nurul Amin Sikdar and the contents of said charge have been read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

5. The prosecution in support of its case examined seven witnesses. Whereas, the defence side has not examined any witness in support of its defence.

6. The statement under section 313 Cr.P.C. of the accused persons are recorded. They denied the allegation against them.

7. I have heard the argument advanced by the learned counsels for both sides.

8. Upon hearing and on perusal of the record I have framed the following points for determination:

- (i) Whether the accused person Md. Altab Sikdar @ Hussain, being the husband of Musstt. Anjuma Begum subjected her to physical and mental torture and on 19.6.2014 drove her out from her matrimonial house and thereby committed an offense punishable U/S 498(A) of IPC?

(ii) Whether all the accused persons, on 27.08.2014, at about 3.00 P.M, at Janpar under P.S. Dharamtul and Dist. Morigaon, in furtherance of their common intention, wrongfully restrained Musstt. Anjuma Begum and thereby committed an offense punishable under section 341/34 of IPC?

(iii) Whether all the accused persons, on the same date, time and place, in furtherance of their common intention, voluntarily caused hurt to Musstt. Anjuma Begum and thereby committed an offense punishable under section 323/34 of IPC?

DISCUSSION, DECISIONS AND REASONS FOR THE DECISIONS:

9. For the convenience of discussion and for the sake of brevity all the points are discussed together.

10. The PW1 Musstt. Anjuma Begum, who is the informant cum victim inter alia deposed that she was married to Altab Sikdar at about 10 years back. She used to stay in Guwahati after 3 years of her marriage. Her husband has a stationery shop at Guwahati. That her husband used to torture her. That other accused persons tortured her at Guwahati. That the accused persons pressurized her to do business of intoxicated things, which she refused. That her husband did not want to keep her as she had no income source. That her husband and other accused persons tortured her demanding money. That her mother gave Rs. 50,000/- to her husband, but her husband demanded more money. That her husband threatened her as she refused to sell intoxicated things, therefore to save her life, she left her matrimonial home leaving her girl child. That after one month, when she had gone to meet her daughter, the accused persons assaulted her. That the accused persons instituted a false case against her and thereafter she lodged this case. She exhibited the ejahar as Ext.1 and her signature as Ext.1(1). She exhibited her statement under section 164 Cr.P.C. as Ext.2 and her signature as Ext.2(1). She further stated that her husband kept her golden necklace after assaulting her. In her cross examination, PW1 inter alia answered that she took custody of her daughter from the police station when the accused persons had brought her there. That she stayed for 8 years in Guwahati with her husband in a rented house. There were houses of Anuwar Hussain, Amirjan Begum and Dilip near the house of her husband. She denied the suggestions put

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to her by the Ld. defense counsel.

11. The PW2 Musstt. Sabirun Nessa, who is the mother of the informant inter alia deposed that at about 10 years back, informant got married with accused Altab Sikdar. That her daughter, i.e. the informant was assaulted and drove out from her matrimonial house by the accused persons keeping her daughter along with them. That after few days, when the informant had gone to meet her daughter, the accused persons assaulted her. Hearing the incident, PW2 went to the house of the accused persons. But the accused persons scolded her and threatened to set fire on her. In her cross examination, PW2 inter alia answered that the informant went to meet her daughter alone. She denied the suggestions put to her by the Ld. defense counsel.

12. The PW3 Musstt. Tahrima Begum inter alia deposed that she knows both the parties. That at about 1 year ago there was a quarrel between both the parties. Hearing hue and cry she went to the PO. That she heard that the informant went to meet her daughter. In her cross examination, PW3 inter alia deposed that she did not know why the informant filed this case. She denied the suggestions put to her by the Ld. defense counsel.

13. The PW4 Musstt. Alima Begum, inter alia deposed that she knows both the parties. That informant is the wife of Altab Ali. Now they lived separately. Quarrel took place when the informant had gone to meet her daughter at the house of the accused persons. That hearing hue and cry she went to the PO and she saw the quarrel. In her cross examination, PW4 denied the suggestions put to her by the Ld. defense counsel.

14. The PW5 Md. Azahar Ali, inter alia deposed that in the year 2014 in the month of August he had seen the accused persons had been assaulting the informant at their courtyard. That informant is the wife of the accused Altab Sikdar, but the informant did not stay at the house of the accused person as there was quarrel between them. In his cross examination, PW5 inter alia answered that his house is one farlong away from the house of the informant. There were houses of Hajarat Ali, Anuwar Hussain and Dilip Sarmah near to the house of Altab. He denied the suggestions put to him by the Ld. defense counsel.

15. The PW6 Dr. Anoopam Rabha inter alia deposed that on 28.08.2014 at 11 A.M. he medically examined Anjuma Begum. He found swelling injury in the right hand. He advised X-ray examination of the patient. The injury was simple and it was probably caused by blunt object. Patient was escorted by

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woman constable Smti. Kunja Das. In cross examination, PW6 inter alia answered that he examined the patient on police requisition. He did not mention about the age of injury in his report. He denied the suggestion that he submitted false medical report.

16. The PW7 SI Sri Lilakanta Bora inter alia deposed that on 27.08.2014 he was posted at Dharamtul PS as SI. On that day informant Anjuma Begum verbally gave an allegation of assaulting. He made GD Entry vide GDE 486 of 27.08.2014 and sent the victim for medical treatment. On 02.09.2014 the informant lodged written ejahar and OC entrusted him for investigation. He interrogated the informant at the PS, visited PO, prepared sketch map. He exhibited the sketch map as Ext.3 and his signature as Ext.3(1). He interrogated the witnesses at the PO. He searched for the accused Altaf Sikdar and 6 others. But they were not available. He arrested the accused Altaf Sikdar alias Hussain and forwarded him to the Court. Rest accused persons were released on bail as their offence was bailable. He collected the medical report of the victim. After investigation he submitted charge sheet against the accused person Altaf Sikdar u/s 498A/494/384 IPC and against accused persons Ibrahim Sikdar, Samsul Sikdar, Sahidul Sikdar, Nurul Amin Sikdar, Musst. Sahar Banu Begum and Sarufa Begum U/S 341/323/34 IPC. He exhibited the charge sheet as Ext. 4 and his signature as Ext. 4(1). In his cross examination, PW7 inter alia answered that the accused was arrested from rented house. The informant's daughter was in the school who was recovered. He has not submitted extract copy of GD entry. He don't know whether informant has applied for job in their PS. House of informant is at the back side of the PS. In the sketch map name of Kunkun Sharma and Habijan Begum is mentioned. He has not recorded their statement. Informant visited with him at Guwahati in the search of accused. He denied the suggestions put to him by the Ld. defense counsel.

17. I have carefully gone through the evidence on record. Section 498A IPC states that whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation —For the purpose of this section, "cruelty" means—

(i) any wilful 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; or

(ii) 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 demand.

18. In this case though the Pw-1 stated that her husband compelled her to deal in intoxicating substance and the accused persons demanded money from her and her mother paid Rs.50000/- but her husband demanded more money. However from the evidence of Pw-2 who is the mother of the Pw-1 no evidence of demand is found. Hence there is contradiction regarding dowry demand between the evidence of Pw-1 and Pw-2 and therefore I do not find it safe to convict the accused Altab Hussian @ Sikdar U/S 498(A) IPC.

19. The Pw-1 in her evidence stated that when she had gone to meet her daughter, the accused persons assaulted her. Her evidence has been corroborated by the evidence of PW-6 M.O. Though the Pw-6 has not exhibited his report but on medical report issued by Pw-6 Ext-2 mark is available. It reveals from the medical report of Pw-1 that on 28-8-2014 the Pw-1 Anjuma Begum had been treated at Ahatguri CHC and she had swelling at her right hand. Her evidence has been corroborated by the evidence of PW-5 who is the eye witness of the incident of assault. Moreover Pw-3 and Pw-4 had also seen quarrel between both the parties. The oral evidence of PW-1 and PW-5, is corroborated by the medical evidence i.e. (Ext-2) medical report and Pw-6 i.e. M.O. Moreover, the evidence of Pw-1 has substantially corroborated her statement U/S 164 Cr.P.C. i.e. Ext.-2.

20. The Ld. Defence counsel argued that there was delay in lodging the ejahar which throws doubt on the prosecution case. I have considered the submission of Ld. defence counsel. The ejahar was given on 2.9.2014 and the incident took place on 27-8-2014. But the Pw-1 in her evidence stated that she was assaulted. There is also a medical report. Hence it can be easily presumed that there was delay in lodging the ejahar due to her treatment. Moreover there is GD Entry vide GDE 486 of 27.08.2014 regarding the same case.

21. It is further argued that I.O. did not examine Kunkun Sarma and Habijan Begum whose names are mentioned in the sketch map. However, it is a

fault on the part of I.O. which is not fatal to the prosecution case. Moreover the prosecution case has been established by the evidence of PW-1, and PW-5 and Pw-6 and their evidence is found to be trustworthy and credible and defence failed to shake their credibility.

22. In view of the above discussion, I am of the opinion that the prosecution side has proved beyond all reasonable doubt that accused Altab Sikdar @ Hussain, Md. Ibrahim Sikdar, Md. Samsul Sikdar, Md. Sahidul Sikdar, Musstt. Saharbanu Begum, Musstt. Sarufa Begum and Md. Nurul Amin Sikdar in furtherance of common intention voluntarily caused hurt to Anjuma Begum and thereby committed an offense punishable U/S 323/34 IPC.

23. In this case the charge under section 341/34 IPC has been framed against the accused. However there is no evidence that accused wrongfully restrained Anjuma Begum. Such being the case, this court is of the opinion that prosecution side has failed to prove the allegation U/S 341/34 IPC against the accused persons.

24. In view of above discussion, the accused persons Altab Sikdar @ Hussain, Md. Ibrahim Sikdar, Md. Samsul Sikdar, Md. Sahidul Sikdar, Musstt. Saharbanu Begum, Musstt. Sarufa Begum and Md. Nurul Amin Sikdar are convicted under section 323/34 IPC and acquitted of charge under section 341/34 IPC and the accused Altab Sikdar @ Hussain is acquitted of charge u/s 498(A) IPC .

25. I have heard the accused persons on the point of sentence. They prayed for leniency. Their statement is recorded in a separate sheet and kept with record. Considering the nature and gravity of offence, and nature of injury sustained by the victim i.e. Pw-1, I am not inclined to extend the benefit of the provision of Probation of Offenders Act to the accused persons. Considering the nature and gravity of offence, and nature of injury sustained by the victim who is an woman the accused persons are hereby sentenced to undergo simple imprisonment for one (1) month and they are also sentenced to pay fine of Rs. 1000/- (one thousand)each in default to simple imprisonment for another one (1) month for offence U/S 323/34 of IPC. The period of imprisonment already undergone in jail be set off against the term of imprisonment imposed.

26. The fine amount, if recovered, be given to the victim Anjuma Begum as compensation for her injuries.

27. Furnish free copy of this judgment to convicted accused persons.

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- 28.** Bail bond shall remain in force for next six months.
- 29.** The case is disposed of on contest.
- 30.** Given under my hand and seal of this Court today, the 11th day of October, 2019.

Dictated and corrected
by me.

S. ACHARYYA
Addl Chief Judicial Magistrate
Morigaon.

S. ACHARYYA
Addl Chief Judicial Magistrate
Morigaon.

Dictation taken and
transcribed be me.

Computer Typist.

APPENDIX:

Prosecution witness:

PW1- Musstt. Anjuma Begum.

PW2- Musstt. Sabirun Nessa.

PW3- Musstt. Tahrima Begum.

PW4- Musstt. Alima Begum.

PW5- Md. Azahar Ali.

PW6- Dr. Anoopam Rabha.

PW7-SI Sri Lilakanta Bora.

Prosecution exhibits:

Ext.1- Ejahar.

Ext.2- Statement U/S 164 Cr.P.C. of Anjuma Begum.

Ext.2- Medical report.

Ext.3- Sketch map.

Ext.4- Charge-sheet.

Defence witness:

Nil.

Defence exhibit:

Nil.

Dictated and corrected
by me.

S. ACHARYYA
Addl Chief Judicial Magistrate
Morigaon.

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Addl Chief Judicial Magistrate
Morigaon.

Dictation taken and
transcribed be me.

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