

**DISTRICT : KOKRAJHAR****IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS,  
KOKRAJHAR****CR Case No. 760/2015**

Under Section 498-A of I.P.C

**Musstt. Afruja Bibi****..... Complainant**

-Vs-

**Md. Taleb Ali****..... Accused**PRESENT : **Sri Achyutananda Saikia, AJS**

APPEARANCE:

For the Complainant: Md. A.S. Talukdar, Ld. Advocate

For the Accused: Md. I. Hussain, Ld. Advocate

Date of Charge: 19.05.16

Date of Evidence: 15.02.16, 04.06.16, 02.01.17, 21.01.17 and 11.10.17

Date of Argument: 05.01.18

Date of Judgment: 19.01.18

**JUDGMENT**

1. The prosecution case is in brief is that the complainant got married to the accused seventeen years ago and they lived their conjugal life. On 18.05.11 the accused in association with his family members demanded Rs. 20,000/- from her and drove her out of her matrimonial house. It is stated further that prior to that the accused and his family members received dowry of one Bigha of land, two bundles of CI Sheet and one cow from complainant's maternal family. On 30.05.11 complainant lodged one case vide GR Case No. 579/11 in that connection which was later

compromised between them on 22.07.15 by filing a compromise agreement before Court and they resumed their conjugal life. But the accused again started to torture the complainant by raising demand of 20/25 thousand rupees saying that he had to bear expenditure of like amount in contesting GR Case No. 579/11 and when the complainant failed to pay the money she was again driven out from her matrimonial house. Hence the case.

2. Statements of the complainant and her witnesses were recorded under Section 200/202 of Cr.P.C. and on being found prima facie materials of offence punishable under Section 498-A of IPC cognizance was taken under said section of law against the accused and processes were issued against him for securing his attendance. Accused made his appearance and were enlarged on bail. After recording evidence before charge of six prosecution witnesses and after hearing the parties on consideration of charge, formal charge under Section 498-A of IPC was framed against the accused and contents of the charge were explained to the accused to which the accused pleaded not guilty. The prosecution witnesses were duly cross examined by the defence. The accused was examined under Section 313 of Cr.P.C. and he denied of committing any offence charged. Defence examined three defence witnesses.

#### **POINTS FOR DETERMINATION**

3. Whether the accused Md. Taleb Ali being husband of the complainant Musstt. Afruja Bibi tortured her both mentally and physically with a view to coercing her and her father to meet his unlawful demand of dowry of Rs. 20,000 and drove her out of her matrimonial house and such wilfull conduct of the accused is of such a nature as is likely to cause grave mental and physical injury to her, and thereby committed offence punishable under Section 498-A of IPC.
4. I have heard arguments of both sides and carefully examined the evidence on record.

**DISCUSSION on EVIDENCE , DECISION and REASON THEREOF**

5. During recording of evidence, the complainant as PW 1 has corroborated the complaint and has stated that she was married to the accused seventeen years ago and out of the wed lock she has five children, three sons and two daughters. She has stated that she lived with the accused happily for about a year or two whereafter the accused started to make quarrels with her demanding Rs. 20,000/- and a bicycle and raising the demand the accused beat her. She has also stated that she lodged GR Case No. 579/11 which was later compromised and thereafter she lived with the accused for about five months but thereafter the accused again tortured her and started to raise demand of Rs. 20,000/- saying that he had to make expenses in the said GR case and she was again driven out of her matrimonial house with her youngest child Asmat Ali. In cross examination PW 1 has stated that the accused made demand of Rs. 20,000/- after compromise for the expenses he incurred in the earlier case and that he did not commit 'marpit' upon her. She admitted that on a day about four/five months ago in the morning at about 7:00 AM when she sat together with her children and the accused to have food the accused quarrelled with her as she used to go to her father's house frequently.
6. PW 2 Eman Ali has stated that before ethnic violence in the year 2012 the complainant and the accused quarrelled amongst themselves and the matter was later compromised, but the accused again started to torture her by raising demand of Rs. 20,000/-. However, the complainant herself stated in her evidence that the accused did not torture her and he just verbally demanded the money for his expenses that he incurred in the earlier case. Hence evidence of PW 2 regarding torture by the accused on PW 1 is not believable. PW 3 Md. Rabial Hoque, PW 4 Md. Azizur Rahman and PW 5 Md. Keramat Ali have stated that the accused quarrelled with the complainant and there was a prior settlement between them but quarrel again resumed. PW 6 Md. Hazarat Ali is the father of the

complainant and he has stated that after the prior settlement the accused demanded his expenses and he beat the complainant and drove her out of his house. However, the complainant herself is very clear that the accused after the prior settlement did not beat her but only verbally demanded Rs. 20,000/- for his expenses. Thus, evidence of PW 6 that the accused bat the complainant is also not trustworthy.

7. Evidence of PW 1 sets forth that the accused tortured her by raising demand of Rs. 20,000/- and there was GR Case No. 579/11 in that connection which was later compromised between them. It is also reflected that thereafter they again resumed their conjugal life and the accused again demanded Rs. 20,000/- from PW 1 saying that he had to incur expenses in connection with GR Case No. 579/11. PW 1 in his cross examination has also clearly stated that when she returned to her matrimonial house after compromise the accused did not commit 'marpit' upon her but he demanded verbally Rs. 20,000/- from her for the expenses in the earlier case. Thus, it has come forth that there were two separate demands of money from the complainant in two occasions by the accused, in the prior occasion there was a case vide GR Case No. 579/11 and it is clear from the evidence of the complainant that the said case was compromised. Thus, the Court has nothing to do with the previous demand as alleged as the matter got ended up on settlement. In case of the subsequent demand, the complainant has clearly mentioned in her evidence that the accused raised such demand as for his expenses in the previous case and that too the demand was raised verbally but no torture was committed on her. Thus, it is clear that it was a mere demand of money.
8. Explanation (b) to Section 498-A of IPC provides that 'cruelty' means 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. In this connection let me refer to the definition of 'dowry' as defined under Section 2 of Dowry Prohibition Act, 1961. According to Section 2 of Dowry Prohibition Act,

1961, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly:-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or maher in the case of persons to whom the Muslim Personal Law (Shariat) applies.

9. Now, it is to see whether Explanation (b) to Section 498-A of IPC befits the definition of 'cruelty' that is alleged to have been committed by the accused on the complainant. Complainant as PW 1 stated in her evidence that the accused demanded Rs.20,000/- for his expenses in the earlier case lodged by her, and thus it was a mere demand of money and not a demand of dowry. Hence, in the case in hand Explanation (b) of Section 498-A of IPC also cannot be applied to bring home the charge under Section 498-A of IPC against the accused.
10. Furthermore, Explanation (a) to Section 498-A of IPC is also not attracted in this case as the complainant in her evidence has clearly stated that the accused merely demanded the money verbally and he did not beat her, and there is no evidence of any harassment on the complainant of a nature as is likely to driver her commit suicide of grave physical and mental injury to her. However, he stated that one morning there was a quarrel between them as she used to go to her father's house frequently. Mere quarrel between husband and wife is very common and the complainant herein has admitted that the quarrel occurred as she used to go to her father's house frequently. Accused also adduced evidence of himself as DW 1 and two other defence witnesses including the son of the complainant Md. Afsar Ali as DW 2 and one Md. Naser Ali as DW 3. DW 1 and his son DW 2, who is also the son of the complainant, have corroborated that the complainant left her matrimonial house on day at about 7:00 AM and on that day she wanted to go to her father's house

and the accused asked her not to go when she got angry and she even tried to assault him with a dao but DW 2 saved DW 1 from the assault., whereafter the complainant and the accused came to the residence of the gaonbura where the complainant even assaulted the mother of the accused and left the place. In cross examination of DW 1 the complainant tried to establish that the accused tortured her by exhibiting the compromise deed dtd. 22.07.15 executed between them where there are writings that the accused promised that he would not torture her and the said agreement is marked as Ext. A. Now, it is seen that the son of the complainant has adduced evidence against his own mother/complainant that it was she who tried to assault his father with a dao but was saved by him, and this on the contrary clarifies the temperament of the complainant in treating her husband and children, and the same also strengthen the lacking veracity of the prosecution story.

11. Hence, from the foregoing discussions it has become abundantly clear that prosecution has miserably failed to bring home the charge under Section 498-A of IPC against the accused beyond all reasonable doubt.

**ORDER**

12. The prosecution has failed to establish the guilt of the accused persons beyond all reasonable doubt by adducing sufficient evidence.
13. The accused Md. Taleb Ali is acquitted from the charge punishable under Section 498-A of IPC and set at liberty forthwith.
14. The bail bond shall remain in force for next six months from the date of this judgment.

Given under my hand and seal of this Court on this the 19<sup>th</sup> day of January, 2018.

(Typed by me)

ACHYUTANANDA SAIKIA

Judicial Magistrate 1<sup>st</sup> Class, Kokrajhar

ACHYUTANANDA SAIKIA

Judicial Magistrate 1<sup>st</sup> Class, Kokrajhar

**APPENDIX****1. Witnesses for Prosecution**

P.W. 1:	Musstt. Afruja Bibi
P.W.2:	Md. Eman Ali
P.W. 3:	Md. Rabial Hoque
P.W. 4:	Md. Azizur Rahman
P.W. 5:	Md. Keramat Ali
P.W. 6:	Md. Hazarat Ali

**2. Witnesses for Defence**

D.W. 1:	Md. Taleb Ali
D.W. 2:	Md. Afsar Ali
D.W. 3:	Md. Naser Ali

**3. Court Witnesses**

NIL

**4. Prosecution Exhibits**

NIL

**5. Defence Exhibits**

Ext. A: Compromise Deed dtd. 22.07.15

ACHYUTANANDA SAIKIA  
Judicial Magistrate 1<sup>st</sup> Class, Kokrajhar