

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE: KOKRAJHAR

**G.R CASE NO.918/13**

**U/S 498(A) of IPC**

**State**

**-Vs-**

**Sri Fazar Ali**

**Accused person**

**PRESENT:- SRI R. KR.TODI, A.J.S**

**Mr. K.Ch.Saha, Ld.A.P.P for the State.**

**Mrs. N. SK, Learned Advocate for the accused person.**

**Date of recording Evidence: - 6.6.14, and 9.9.14**

**Date of hearing Argument:- 8.10.14.**

**Date of delivery of Judgment:- 8.10.14.**

## J U D G M E N T.

1 Prosecution case in brief, is that, marriage between informant Rashida Khatun and accused Fazar Ali took place on 15.9.12 and they resumed their conjugal life. After lapse of some time of marriage the accused started torturing the informant both mentally and physically demanding dowry. Village **Bichar** also took place several times to resolve the issue but in vain the accused continued to torture the informant and ultimately on 27.09.13 assaulted her while she was pregnant and drove her out of matrimonial home.

2 On receipt of said ejahar Kazigaon P.S Case No.59/13 was registered and on completion of investigation charge –sheet was submitted under section 498(A) of IPC.

3 On appearance he was enlarged on bail. Copy was furnished. My learned predecessor framed charge under section 498(A) of IPC against the accused and the same was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

4 POINT FOR DETERMINATION:-

My learned predecessor framed charge U/s 498(A) of IPC as follows:-

Whether the accused Fazar Ali, after his marriage with Rashida Khatun on 15.9.12 being the husband of informant Rashida Khatun, subjected her to cruelty and harassed her with a view to coerce her to meet unlawful demand of money and thereby committed offence punishable under section 498(A) of IPC?

5 During trial prosecution examined 4(four) witnesses including Rashida Khatun. Examination of accused person under section 313 of Cr.P.C was dispensed with. Heard arguments.

6. DISCUSSION DECISION AND REASONS THEREOF:

Let me go through the evidence on record at the outset.

P.W.1 Rashida Khatun, the informant-cum-alleged victim deposed that her marriage took place about 2 years back with the accused person Fazar Ali and after marriage she resumed her

conjugal life with the accused. She alleged that after marriage the accused began to assault her demanding Rs.50,000/-. She further alleged that accused drove her out of the matrimonial home after assaulting her and she took shelter in the house of her parents and since then she has been staying her parent's house. She deposed that at the time of driving out by the accused she was pregnant. She proved Ext.1 as ejahar and Ext.1(1) as her signature.

In her cross-examination she stated that she told her mother that accused had assaulted her and also demanded money from her. She also stated that on the aforesaid matter a **Bichar** was held in the village. She deposed further that while the accused drove her out after beating her she screamed for help but nobody came to her rescue although there were house of some persons near the house of her husband. She admitted that she did not know what was written in the ejahar and she also did not read the ejahar. She denied the **suggestion** that the accused did not assault her and also did not drive her out from his house rather voluntarily she left the house of accused and had filed the instant false case against the accused.

7. P.W.2 Surjya Bewa deposed inter-alia that P.W.1 Rashida Khatun was her grand daughter. She also deposed in the line of P.W.1 that after marriage of P.W.1 with accused Fazar Ali, he assaulted her demanding Rs.50, 000/- She stated that on this matter a village **Bichar** was held. She also stated that the accused drove out P.W.1 from his house beating her and at that time P.W.1 was pregnant.

In her cross-examination she admitted that near the house of accused there were 10/12 houses of different people. She also admitted that accused assaulted Rashida Khatun (P.W.1) only once while she was pregnant and thereafter the accused never assaulted her. She also deposed that other people saw the incident of assaulting Rashida Khatun by the accused but they did not come to her rescue. She also stated that as many as 3 times **Bichar** took place in the village and a document in written by also prepared in the

**Bichar**. She denied the suggestion that accused did not assault Rashida Khatun.

8. P.Ws.3 and 4 namely Sumsul SK and Usman Ali simply deposed that they heard that after marriage their took place some quarrel between P.W.1 and accused on some domestic affairs.

Their cross- examination was declined.

9. Section 498 A reads as under:-

498A, Husband or relative of husband of a woman subjecting her to cruelty,- 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 purposes of this section, 'cruelty' means-

- (a) Any willful 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
- (b) 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 or failure by her or any person related to her to meet demand.

In view of the ingredients of cruelty as laid down in section 498 A of IPC above let us now examine the evidence of P.W.1 the informant –cum- alleged victim Rashida Khatun. It appears that from her evidence that she deposed that after some time of her marriage the accused began to assault her demanding Rs. 50,000/- and drove her out for his matrimonial home. She, however in her cross-examination admitted that she did not know what was written in the ejahar and she also did not read the ejahar. She further admitted that a **Bichar** was also held in the village regarding the alleged assault and demand of money by the accused. She also stated that while the accused

assaulted her she screamed for help but nobody came to her rescue. She stated further that she told her mother about the assault on her and also demand of money by the accused.

10. On going through the definition of cruelty as given in explanation section 498 A of IPC it appears that to attract section 498A of IPC cruelty denotes any willful 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 harassment of the woman with a view to compel her for any person related to her to meet any unlawful demand for any property etc. on account of failure by her or any person related to her to meet demand.

11. Now, from the evidence of P.W1 the informant- cum- alleged victim Rashida Khatun it appears that she stated in a very casual manner that after some time of marriage she was assaulted by the accused demanding Rs.50, 000/-. In his deposition she nowhere stated specifically as to when (in which month) or year the demand was made and also when she was assaulted. She also did not state the manner in which she was assaulted. Further there is no medical or injury report on record to substantiate the statement of P.W.1 that she sustained injury due to assault by the accused.

In her cross-examination she categorically admitted that she did not know what was written in the ejahar and that the same was also not read over to her. This admission of P.W.1 goes to show that the story narrated in the ejahar is not her version. On perusal of ejahar it appears that it was stated that the accused assaulted the informant P.W.1 by a '**piece of wood**' but in her statement before the court she never stated that she was so beaten up. She also did not state that the accused made demand of Rs.50,000/- on 27.9.13 as stated in ejahar.

12. P.W.1 stated in her evidence that she told her mother that the accused had assaulted her and also demanded money from her but it appears from the record that mother of P.W.1 was not examined by

prosecution to substantiate the version of P.W.1 that she was assaulted by the accused and that the accused made any demand of money. From the evidence of P.W.2, grand mother of P.W.1 it appears that she did not witness any incident of assault or demand. Further it is version of both P.W.1 and P.W.2 that regarding the incident of alleged assault and demand of money **Bichar** took place in the village but to that effect no evidence came forth. P.Ws 3 and 4 also pleaded complete ignorance about the any **Bichar** in the village regarding the alleged incident. From their evidence it appears that they did not witness or hear about any incident of assault on P.W.1 and also of any demand by the accused to P.W.1. As per them they only heard that after marriage on some domestic affairs a quarrel took place between P.W.1 and the accused.

13. From the evidence as above it is very much clear that there is no cogent and convincing evidence on record to attract section 498 A of IPC against the accused person. Even the statement P.W.1 the victim, appears to be fully self contradictory with ejahar with regard to her allegation of assault and demand of money by the accused.

14. So situated, it can be safely concluded that no offence has been made out under section 498 A of IPC against the accused person and therefore he deserves to be acquitted at list on benefit of doubt and accordingly the accused is acquitted from charge under section 498 A of IPC on benefit of doubt and set at his liberty forthwith.

15. Judgment is pronounced.

The case is disposed of.

Given under my hand and seal of this court, this 8<sup>th</sup> Day of Oct'2014 at Kokrajhar.

**Dictated and corrected  
By me**

**R. Kr. Todi  
Addl. Chief Judicial Magistrate,  
Kokrajhar**

**Addl.C.J.M, Kokrajhar**

**APPENDIX**Prosecution witnesses.

1.P.W.1 Mosstt. Rashida Khatun

2. P.W2 Surjya Bewa

3. P.W.3 Sumsul SK and

4. P.W.4 Usman Ali

Defence witness ..... Nil.

**Addl. Chief Judicial Magistrate,  
Kokrajhar**