

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE,  
UDALGURI :: ASSAM.**

**G.R. CASE NO. 1126 of 2019  
(PRC NO. 1075/2019)**

**U/S- 498(A) of I.P.C.**

**Present: Smti. Ranjita Agarwalla  
Chief Judicial Magistrate  
Udalguri, Assam.**

**STATE**

**-VS-**

**SRI BISWAJIT NATH**

**.....Accused.**

**For the Prosecution : Mr. M. Khakhlary, Ld. Addl. PP.**

**For the Defence : Mr. M.P. Rabha, Ld. Advocate.**

**Date of prosecution evidence : 11-01-20, 04-02-21, 09-03-21  
24-03-21, 17-04-21 and  
25-11-2021.**

**Date of argument : 07-12-2021.**

**Date of Judgment : 07-12-2021.**

**J U D G M E N T**

1. The crux of the prosecution case under Section 498(A) of I.P.C. is that on 22-10-2019, a written ejahar was lodged at Khairabari Police Station by one Smti. Nitumoni Boro, D/o Sri Pawan Boro, a R/o village-Mougaon, No. 1 Botabari under Kalaigaon Police Station, Udalguri alleging that three years ago she got married with Sri Biswajit Nath, S/o Sri Sambhuram Nath Under Khairabari Police Station. At present she is mother of a two years old female child. But after two months of their marriage, her husband started torturing her, assaulting physically on various pretext. On 25<sup>th</sup> Bohag at about 3 P.M. her husband chased her away from her matrimonial home by way of assaulting on pretext of dowry. Having no option she

took shelter at her parental home at Mougaoon No. 1 Batabari under Kalaigaon Police Station. She has lodged this case so as to take action against the accused.

2. On receipt of the ejahar to the effect aforesaid, a police case was registered vide Khairabari PS case no. 36 of 2019 U/S 498(A) I.P.C. and on completion of investigation, the Investigating Officer submitted the charge sheet against the accused Sri Biswajit Nath alleging commission of the offence U/S 498(A) I.P.C.
3. On the basis of the charge sheet, cognizance of offence was taken under Section **190 (1)(b)** of the Cr.P.C. Necessary processes were issued for causing appearance of the accused person before the court. Accordingly the accused appeared before the Court to answer the charge as alleged and the necessary copies of all relevant papers and documents were furnished to the accused in compliance with the provision of Section 207 Cr.P.C. Finding a prima-facie case for commission of offence U/S 498(A) I.P.C. the charge was framed U/S 498(A) I.P.C., read over and explained to him to which the accused pleaded not guilty and claimed to stand trial.
4. In order to bring home the charge, the prosecution examined as many as nine(9) prosecution witnesses in the form of:

**PW 1 Smti. Nitumoni Boro(Informant)**

**PW 2 Sri Pawan Boro**

**PW 3 Smti. Makani Boro**

**PW 4 Sri Rebon Chandra Nath**

**PW 5 Sri Purna Mohan Barman**

**PW 6 Sri Sambhu Ram Nath**

**PW 7 Sri Kushal Nath**

**PW 8 Dr. Dhiraj Kalita (M.O.) and**

**PW 9 A.S.I. Jagadish Chouhan (I.O.).**

The prosecution has exhibited the following documents in the form of:

**Ext. 1 Ejahar.**

**Ext. 2 164 Statement.**

**Ext. 3 Medical Report.**

**Ext. 4 Sketch Map.**

**Ext. 5 Charge-sheet.**

5. After recording the prosecution witnesses the accused was examined U/S 313 Cr.P.C. All the incriminating circumstances which appeared in evidence against the accused were put to him for his explanation. The accused denied all the circumstances and pleaded his innocence. Further the accused declined to adduce any evidence in defence.
6. I have heard the argument put forward by the learned Additional P.P. and the learned advocate appearing for the accused person. I have also carefully gone through the entire evidence available with the case record.
7. **POINT FOR DETERMINATION :**

Whether the accused person being the husband of the informant Smti. Nitumoni Boro of village- No. 1 Botabari, Mougaoon under Kalaigaon Police Station, during conjugal life and since two months from their marriage, subjected her to cruelty of both physical and mental on some illegal demands of dowry and specially on last 25<sup>th</sup> Bohag of Assamese Calendar year at about 3 P.M. assaulted and chased her out from her matrimonial home for which she had to take shelter at her parental home and thereby committed an offence punishable U/S 498(A) I.P.C.?

**DISCUSSION, DECISION AND REASONS THEREOF:**

8. For convenience, let me go through the provisions of offences alleged against the accused persons. ***Section 498-A IPC 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 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***

***(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 of failure by her or any person related to her to meet such demand.***

9. To bring home the guilt punishable under Section 498-A IPC, the prosecution must allege and prove physical or mental cruelty, as provided under explanation (a) or explanation (b) of Section 498-A IPC.
10. **PW 1 Smti. Nitumoni Boro** is the star witness of this case. She has deposed in the evidence that about four years ago she got married with the accused and they lived together as husband and wife for two years. After three months of their marriage her husband started inflicting physical and mental torture with a demand of dowry in cash amount. After one year a female child was born and her husband suspected her the child to be her brother's or father's child with her and refused to accept the child as his own. About two years ago, her husband chased her away from her matrimonial home and finding no other alternative she returned to her parental home and since then she has been living with her baby in her parental home. During that period her husband neither took any initiative to take her back nor provided any kind of support for their livelihood. At present she doesnot want to go with her husband and live with him as husband and wife. As her husband ruined her live, hence she lodged this case against him.

**Ext. 1** is the ejahar and **Ext. 1(1)** her signature thereon.

**Ext. 2** is the **164 Cr.P.C.** statement and **Ext. 2(1) & 2(2)** are her signatures.

11. **PW 2 Sri Pawan Boro** the father of the informant who disclosed that the accused is his son-in-law. In the year 2016 his daughter got married with the accused socially. In the marriage he gave all articles to them. But the accused again demanded dowry and for his inability to fulfill his demands the accused used to torture his daughter both physically and mentally and about two years back the accused accompanied to his daughter (PW1) to their house and escaped leaving his daughter (PW1) at his home. Since then his daughter has been living with them with her baby. The accused did not take any initiative to get back PW 1.
12. **PW 3 Smti. Makani Boro** averred that the informant is her daughter and the accused is her son-in-law. About four years back her daughter got married with the accused and after marriage the accused tortured the informant under influence of liquor for which she came back to their house several times, but each

- time they returned her back to her matrimonial home thinking about her future. But the accused again tortured her and she again came back and about two years back her daughter (PW1) returned to their house with her baby and since then she has been living with her baby at their house. And finding no other option her daughter lodged this case against the accused.
13. **PW 4 Sri Reban Chandra Nath** deposed that he knows both the parties. Presently the informant is at her residence. Being co-villager, the father of the accused asked him along with Gaonburha and others to bring the informant back to their house, but the informant refused to go with them and he doesnot know the reason of her (PW1) refusal.
  14. **PW 5 Sri Purna Mohan Barman** has stated in his deposition that the informant and quarreled with the accused but he doesnot know as to how the quarrel took place.
  15. **PW 6 Sri Sambhu Ram Nath** the father of the accused deposed that the informant desired to reside at her parental home and she went to her parental home,. They went to bring her back.
  16. **PW 7 Sri Kushal Nath** deposed that the accused and the informant are his brother and sister-in-law. Since the informant desired to reside at her parental home and she went to her parental home. Subsequently, they went to bring her back but yielded not result.
  17. **PW 8 Dr. Dhiraj Kalita** deposed that on 22<sup>nd</sup> October, 2019 at about 2:08 while he was on duty at Khairabari CHC, he examined the victim Smti. Nitumoni Boro and found no fresh injury mark on her and submitted his medical report.  
**Ext. 3** is the Medical Report and **Ext. 3(1)** is his signature.
  18. **PW 7 is the Investigating Officer A.S.I. Jagadish Chouhan** stated that on 22-10-2019 one ejahar was lodged by the informant Smti. Nitumoni Boro at Khairabari Police Station and he was entrusted for the investigation of the case and accordingly, he took up the investigation of the case and sent the victim for medical examination, visited the place of occurrence, interrogated the witnesses he found there and drew the sketch map, collected the medical report of the victim and after completion of investigation submitted the charge-sheet against the accused U/S 498(A) of I.P.C. **Ext. 4** is the sketch map, **Ext. 4(1)** is his signature, **Ext. 5** is the charge-sheet and **Ext. 5(1)** is his signature.
  19. Now, from the materials available on record, it reveals that PW 1 is the alleged victim as well as the informant of this case who deposed that regarding torture

she stated that after three months of their marriage her husband used to torture her mentally and physically on demands of dowry of cash amount and in her statement recorded U/S 164 Cr.P.C. she has stated that after marriage the accused started subjecting her both physical and mental cruelty and demanded money and other valuable items. Regarding the demands of dowry PW 2, the father of PW 1 in his deposition also stated that the accused demanded dowry and for his inability to fulfil his demands, he used to torture his daughter both mentally and physically. PW 3 although the mother of PW 1 is total silent in her testimony about the demands of dowry made by the accused person. PW 1 is also silent in this context, only mentioned in her ejahar that she was subjected to torture on demands of dowry; but she has not specified whether cash or valuable items were demanded by the accused. In her evidence she has stated that money was demanded but she has not specifically stated about the specific amount of money and when the money was demanded and for what purpose or why. Only supporting by PW 2 to the version of PW 1 that the accused demanded dowry is not sufficient to hold that the accused actually subjected torture to the informant on demands of dowry as alleged in absence of other corroborative and substantive evidence in this context.

20. Here, the marriage between the parties is not in dispute. From the evidence of PW1 it reveals that she raised allegation of demanding dowry by the accused from her parents after three months of their marriage. Moreover, she was subjected to torture of both physical and mental due to non-fulfillment of the demand by the accused.
21. PW 1 in her testimony stated that after one year of their marriage a girl child was born. But the accused refused to accept the baby as his own and suspected the child to be her brothers or father's illegitimate child with her. In this context PW 1 being the informant in her statement recorded U/S 164 Cr.P.C. is totally silent. Ejahar and other PWs are also mum in this regard. Thus, in absence of any corroborative evidence, it is difficult to accept the evidence of PW 1 in this aspect. Moreover, PW 1 stated that her husband chased her out from her matrimonial home. In the ejahar she has stated the same fact; but in her statement recorded U/S 164 Cr.P.C. she stated that she could not bear the torture of the accused and she took shelter at her parental home. In this regard PW 2 stated that the accused accompanied to her and escaped leaving his daughter (PW1) at his residence. Similarly, PW 3 also stated that two years back their daughter came to their residence along with her child.
22. Thus, from the aforesaid evidences of the PWs it is difficult to hold that whether the alleged victim i.e. PW 1 was chased out from her matrimonial home or she

took shelter at her parental home or the accused left her at her parental home. **PW 3 Smti. Makani Boro** in her deposition stated that on several occasion her daughter (PW1) returned to their house as the accused subjected her torture physically under the influence of liquor and each time they send her back along with the accused person considering her future. But other PWs are total silent in this respective testimony about the tortures regarding coming and going out of PW 1 at her parental home. It is also noted that PW 5 stated that he had seen that the informant quarreled with the accused but he too does not know as to why the quarrel was taken place between them. **PW 4 Sri Rebon Chandra Nath, PW 6 Sri Sambhu Ram Nath** and **PW 7 Sri Kushal Nath** in their respective testimonies stated that they went to bring back the informant but she refused and exposed her desire to reside at her parental home. **PW 8 Dr. Dhiraj Kalita(Medical Officer)** stated that on 22-10-2019 at Khairabari he examined the victim Smti. Nitumoni Boro and found no injury mark and the victim is also silent about any injury sustained by her. Again PW 9, the Investigating Officer of this case in his cross-examination admitted that the incident took place on 09-04-2019 as alleged but the ejahar was lodged on 22-10-2019 i.e. after a gap of six(6) months and regarding the said delay there is no single whisper made by the prosecution witnesses including the informant. PW 2 in his cross examination deposed that his daughter PW 1 does not want to live with the accused anymore and the case was filed against the accused as the accused frequently threatened them over phone.

23. Here, I would like to cite a case reported in **2011(2) GLT 240 in State of Tripura Vs Apu Pal** wherein the **Hon'ble Gauhati High Court** held that : "***No evidence indicating that the conduct of the accused respondent was willful to cause grave injury or danger to life of the informant – Stray incident of torture which did not cause grave injury or danger to life cannot be treated as 'cruelty' – Allegations not fulfilling ingredients of an offence under Section 498(A) I.P.C.***"
24. Again, in **Dilip Singh Vs State of Assam** reported in **2011 (2) GLT 225** the **Hon'ble Gauhati High Court** held that: "**Since there is no substantive, cogent and reliable evidence to believe that there was any demand for property or valuable security. Therefore, the provisions of Section 498(b) are not applicable in the present case. .... In order to hold a person guilty of the offence under Section 498A I.P.C., for committing the acts prescribed by Section 498(a) IPC, it must be established that the conduct of the accused person was of such a nature that the same was likely to drive the woman to commit suicide or to cause grave injury or damage to life, limb or health of the woman.**"

25. In my considered view, the fact shows that her (PW1) conjugal life was not smooth. But these facts do not substantiate the fact that she was subjected to torture of grave injury to her life, limb or health mentally or physically. That apart, the prosecution side has also failed to substantiate the fact of demands of dowry as well as harassing the informant by the accused person on the said demand by supporting any medical evidence as well as other independent witnesses. While PW 1 has not asserted the claim of dowry demand specifically in this context, the allegation of stray demands of dowry does not substantiate to book the accused under Section 498(A) of Indian Penal Code which is serious in nature. Therefore, considering the facts and circumstances of the case I hold that the prosecution has failed to book the accused under Section 498(A) of Indian Penal Code beyond reasonable doubt.
26. Considering the evidences as discussed above I find that the prosecution side has failed to establish crucial points of demands of dowry as well as torture by supporting any medical as well as corroborative evidences. As such, I come to the conclusion that the prosecution has failed to establish the case beyond all reasonable doubt.
27. Thus, from the above discussion, I find that the prosecution has failed to establish the case U/S 498(A) I.P.C. against the accused person. Hence, the accused is not held guilty U/S 498(A) I.P.C.

**O R D E R**

28. In the result, the accused person namely Sri Biswajit Nath is acquitted from the charge U/S 498(A) I.P.C. and he is set at liberty forthwith.
29. Bail bond shall remain in force for next 6 months as per provisions of Section 437(A) Cr.P.C.
30. Send a copy of this judgment to the District Magistrate, Udalguri for information as per provisions of Section 365 Cr.P.C.

Given under my hand and seal of this Court on this 7<sup>th</sup> day of December, 2021 at Udalguri, Assam.

**Dictated and corrected by me:**

**(Ranjita Agarwalla)**  
Chief Judicial Magistrate  
Udalguri, Assam.

**(Ranjita Agarwalla)**  
Chief Judicial Magistrate  
Udalguri, Assam



**APPENDIX**

- A. Prosecution witnesses : **PW 1 Smti. Nitumoni Boro(Informant)**  
**PW 2 Sri Pawan Boro**  
**PW 3 Smti. Makani Boro**  
**PW 4 Sri Rebon Chandra Nath**  
**PW 5 Sri Purna Mohan Barman**  
**PW 6 Sri Sambhu Ram Nath**  
**PW 7 Sri Kushal Nath**  
**PW 8 Dr. Dhiraj Kalita (M.O.) and**  
**PW 9 A.S.I. Jagadish Chouhan (I.O.).**
- B. Defence witness : **Nil.**
- C. Documents exhibited : **Ext. 1 Ejahar.**  
**Ext. 2 164 Statement.**  
**Ext. 3 Medical Report.**  
**Ext. 4 Sketch Map.**  
**Ext. 5 Charge-sheet.**

**(Ranjita Agarwalla)**  
Chief Judicial Magistrate  
Udalguri, Assam.