

**IN THE COURT OF SUB-DIVISIONAL JUDICIAL
MAGISTRATE (S) :: UDALGURI**

DISTRICT: UDALGURI

Present: Smti. Monica Boro, LL.M., AJS

Sub-Divisional Judicial Magistrate (S), Udalguri

G.R.Case No. 373/2020

(PRC No. 261/2021)

U/S 498A of the Indian Penal Code, 1860

State

.....Complainant

Vs.

Sri Naba Kumar Deka

S/o Sri GirinDeka

R/O - Vill- Mazgaon (Chatiapara)

P.S.-Tangla

Dist. - Udalguri, Assam

.....Accused Person

ADVOCATES APPEARED-

FOR THE COMPLAINANT

: SmtiNandiraNarzary,

Ld. A.P.P.

FOR THE ACCUSED

: SmtiGeetaDeka, Def.

counsel.

EVIDENCE RECORDED ON : 02-11-2021

ARGUMENT HEARD ON : 02-11-2021

JUDGMENT DELIVERED ON : 02-11-2021

J U D G M E N T

1. The prosecution story as transpires from the Ejahar is that the informant **Smti Himadri Rabha Deka, W/o Sri Naba Kumar Deka**, lodged an Ejahar at Tangla P.S. *inter alia* stating that after two years of her marriage with the accused person, she has been tortured both physically and mentally. The accused person with his friends used to drink liquor in his own house and if she would not listen to him, then, the accused person would beat her and also misbehave her. Then on 02/04/2020 in the evening some of the friends of her husband came to her house and asked for liquor and when she refused to give liquor to them, then the accused, taking a dao in his hand, wanted to kill her. However, her mother-in-law stopped the accused but the accused destroyed the handloom and drove her away from her matrimonial home. Hence, the prosecution case has come up.

2. The Ejahar was received from the complainant at Tangla P.S. and registered vide Tangla P.S. Case no. 56/2020 dated 05/04/2020 u/s **498A of I.P.C.** and the O/C, Tangla P.S. entrusted SI Upen Chandra Barman to take up the investigation of the case. During investigation, the I.O. found sufficient materials against the accused Sri Naba Kumar Deka u/s **498A of I.P.C.** and submitted charge-sheet

against him under the above section of law. The charge-sheet is kept with the case record.

3. In due course of time the accused person appeared before the court and relevant copies were submitted to the accused as per section 207 Cr.P.C. And having found a prima facie case against the accused person u/s **498A of I.P.C.**, particulars of offences under the said sections of law was explained to the accused person to which he pleaded not guilty and claimed to face trial.
4. The prosecution in support of its case examined 1 witness and submitted that further witness of prosecution is closed. As there found nothing incriminatory materials against the accused, hence his examination u/s 313 is dispensed with. The defence counsel submitted that he will not adduce any witness, hence DW is closed.
5. Heard Ld. APP SmtiNandiraNarzary for state and SmtiGeetaDeka, counsel for defense. The Ld. APP has submitted that the evidence of witness would be enough to prosecute the accused person. On the other hand, the Id. defence counsel has submitted that the accused person is innocent and the complainant and the accused person have settled their dispute. Hence, the accused person is to be

acquitted. Also perused the other materials on record.

POINT OF DETERMINATION:

- i) Whether on or about 02/04/2020 in the evening at Mazgaon (Chatiapara) under Tangla P.S., the accused person being the husband of the informant **SmtiHimadri RabhaDeka** tortured her both physically and mentally and as contemplated u/s 498A of I.P.C. and thereby committed an offence u/s 498A of IPC?

REASON AND DECISION:

6. **PW-1 SmtiHimadri Rabha** in her deposition has stated she is the complainant of the case who lodged the case against her husband in the year 2020. The quarrel took place between her and the accused person on domestic matters and she was tortured by the accused. Then she lodged the case on being aggressive. Presently, she is with her husband in his house. She does not want to proceed the case. During her **cross-examination**, she stated that she has no objection if the accused is

acquitted from the case. She is treated properly in her matrimonial home.

7. On perusal of the record and also the evidence of PW1 it is seen that the informant lodged the case against her husband who has harassed the informant mentally and physically whenever the accused got drunk. Then on 02/04/2020 in the evening, some of the friends of her husband came to her house and asked for liquor and when she refused to give liquor to them, then the accused, taking a dao in his hand, wanted to kill her. However, her mother-in-law stopped the accused but the accused destroyed the handloom and drove her away from her matrimonial home. It is seen that the prosecution has examined the informant as PW1 in the instant case. From perusal of the statement of PW1, it is seen that there was a quarrel between her and her husband. Though there is mention as to why there was a quarrel between her and her husband but it is seen that there is no mention as to specific amount of dowry or any tortures as stated in the Ejahar. It is also seen that PW1 did not state anything about any date on which she was tortured as stated in the Ejahar as well as in her deposition before the court. Hence, it is seen that there is no corroboration of statement of PW1 in her Ejahar and statement before the court.

Hence this creates doubt as to whether any incident occurred as stated by PW1.

8. It is also seen from the statement of PW1 that there is no mention of any date on which the incident occurred. It is also seen that there is no statement of occasional torture meted to her by her husband. Even it is assumed that there was an incident as stated by her in the Ejahar, PW1 would have stated before the court.
9. Moreover PW1 herself stated that she has lodged this case against the accused out of misunderstanding and she is with her husband in his house. The prosecution has also did not examine any other witness to corroborate the statement of PW1. That apart, PW1 has no objection if the accused person in acquitted form the instant case.
10. Section 498-A of IPC provides for punishment to the husband or any relative of husband of a woman who subjects such woman of cruelty. From the discussion above made it is seen that from the evidence of PW1 that the prosecution could not prove that the accused person has committed the offence u/s 498A of IPC as because PW1 could not give proof of any sufficient documents and also could not state any specific dates on which she was treated cruelly by her husband.

11. Hence from the above adumbration and appreciation it is seen that the prosecution has failed to prove that the accused person **Sri Naba Kumar Deka** has committed the offence u/s 498A of I.P.C.

12. It is law of criminal jurisprudence that in case of doubt, benefit of doubt must be given to the accused person. In the instant case the prosecution could not prove beyond reasonable doubt that the accused person **Sri Naba Kumar Deka** has committed the offence u/s 498A of IPC.

ORDER

Accordingly, the accused **Sri Naba Kumar Deka** is acquitted of the offence u/s 498A of Indian Penal Code, 1860 and as such he is set at liberty forthwith. The concerned bail bond is further extended to six months from today.

The seized article, if any, be disposed of in accordance with law in due course.

The case is disposed of on contest.

Given under my hand and the seal of this court on 02nd day of November, 2021.

Smti. Monica Boro, AJS
Sub-divisional Judicial Magistrate
(S),
Udalguri

APPENDIX

PROSECUTION EXHIBITS :

1. Exhibit 1- Ejahar

DEFENCE EXHIBITS:

NIL

PROSECUTION WITNESS :

1. **PW1 SmtiHimadri Rabha**

DEFENCE WITNESS

NIL

Smti. Monica Boro, AJS
Sub-divisional Judicial Magistrate
(S),
Udalguri

