

IN THE COURT OF THE ASSTT. SESSIONS JUDGE, JORHAT.

**Present: Smti. D. Dutta,
Asstt.Sessions Judge, Jorhat.**

Monday, the 4th day of March, 2024
Sessions case No.214(JJ)2022
under sections 498 A/436/506, IPC
(Arising out of G.R.case No.195/2020)

Complainant	:	State of Assam
Represented by	:	Sri Pallab Jyoti Baruah, Learned Addl.P.P.
Accused person	:	Sri Probin Ghatowar (A1) S/o.Late Takidar Ghatowar, R/o.Rajoi Purana Hatkhola P.S-Teok, Dist- Jorhat
Represented by	:	Smti.Rajashree Gogoi, learned Defence counsel.

Date of Offence	:	15.01.20.
Date of FIR	:	15.01.20.
Date of Charge-sheet	:	22.04.20.
Date of Framing of Charge	:	29.11.22.
Date of Commencement of Evidence	:	19.12.23; 02.01.24; 04.03.24
Date on which judgment was reserved	:	04.03.2024
Date of Judgment	:	04.03.2024

ACCUSED DETAILS

Rank of Accused	Name of Accused	Date of Arrest	Date of Released on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for hte purpose of Section 428 CrPC
A1	Probin Ghatowar	20.11.23		U/s.498 A/436/506 IPC	Acquitted	Does not arise	Does not arise

JUDGMENT

1. The factual background leading to the prosecution case is that on 15.01.2020 informant Smti.Rumi Ghatowar lodged an ejahar before the In-Charge, Lahdoigarh Police Outpost stating ,inter alia, that after the marriage with accused Sri Prabin Ghatowar, she has been staying at her matrimonial home along with her husband and their minor son. Her husband, for want of dowry had subjected her to physical and mental torture for the last couple of days. On the previous night of 15.01.2020, at about 3 A.M. the accused, under the influence of liquor, attempted to kill her and her son, but she could somehow manage to save her life from the accused. As he failed on his attempt hence the accused set fire in their residential house. Hence, the case.

INVESTIGATION.

2. On receipt of the FIR, In-charge of Lahdoigarh Outpost made a G.D.Entry bearing No.272 dated 15.01.2020 and forwarded the same to the Officer-in-charge of Teok P.S for registering a regular case under proper section of law. On receipt of the ejahar, Officer-in-charge of Teok Police Station registered a case bearing Teok P.S case No.41/2020 under sections 498A/436/34 of Indian Penal Code and entrusted S.I Khargeswar Dekka to investigate the case. During investigation, Investigating officer recorded the statement of witnesses, visited the place of occurrence, prepared a sketch map of the same and arrested the accused. On completion of investigation, Investigating officer submitted charge sheet

against the accused, namely, Sri Probin Ghatowar, for the offence punishable under sections 498A/436/506 of Indian Penal Code. Later on he was enlarged on bail.

3. Learned Addl.Chief Judicial Magistrate, Jorhat, vide order dated 16.09.22 committed the case to the Court of Hon'ble Sessions, Jorhat with a direction to the accused appear before the Court of Hon'ble Sessions, Jorhat.

4. Later on, vide order dtd.19.01.22, Hon'ble Sessions Judge, Jorhat, transferred the case to this Court for trial. Accordingly the Accused appeared before this Court and was allowed to remain on his previous bail. After hearing learned counsel for both sides and finding prima facie case against the accused, formal charges of offences punishable under sections 498A/436/506 of Indian Penal Code were framed. When the contents of charges were read over and explained to the accused, he pleaded not guilty and claimed to face trial. During trial the accused failed to turn up and as such non bailable warrant of arrest was issued against him. Later on he was arrested and produced before the court and he was in jail custody till final disposal of the case.

5. During trial, prosecution side examined as many as 03 witnesses including the Informant/victim in support of its case. On closure of prosecution evidence, statement of the accused was recorded under section 313 of Code of Criminal Procedure. Defence declined to adduce any evidence.

6. Heard the argument advanced by the learned Addl.P.P for the State as well as learned defence counsel and also

perused all the evidence available on record meticulously and I find the following.

POINTS FOR DETERMINATION.

(i) Whether the accused, being the husband of the informant/victim Smti. Rumi Ghatowar, subjected her to cruelty in terms of Section 498-A of IPC and the accused thereby committed an offence punishable under section 498A of Indian Penal Code ?

(ii) Whether the accused on 15.01.2020 at about 3 a.m, at Rajoi Purona Hatkhola, committed mischief by fire, intending to cause (or knowing it to be likely that the accused thereby cause) the destruction of informant's house and thereby committed an offence punishable under section 436 of Indian Penal Code ?

(iii) Whether the accused on the same day, time and place, committed criminal intimidation by threatening the informant/victim as named above and her son and thereby committed an offence punishable under section 506 of Indian Penal Code ?

DECISION, DISCUSSION & REASONS THEREOF.

7. I have gone through the entire materials on record to come to a definite conclusion on the above noted point for determination. After hearing the learned counsel for the accused and the learned Addl. P.P. for the State, I give my decision on the same as follows:

8. In order to bring home an offence punishable under section **498A** Indian Penal Code, the prosecution needs to prove the following facts:-

1. A woman was married;
2. She was subjected to cruelty;
3. Such cruelty consisted in-

(i) any lawful conduct as was likely to drive such woman to commit suicide or to cause grave injury or danger to her life, limb or health whether mental or physical;

(ii) harm to such woman with a view to coercing her to meet unlawful demand for property or valuable security or on account of failure of such woman or any of her relations to meet the lawful demand;

(iii) the woman was subject to such cruelty by her husband or any relation of her husband.

9. The essential ingredients of offence punishable under section 436 of Indian Penal code are as follows :

- i) Accused committed mischief;
- ii) He did it by setting fire or using any explosive substance.
- iii) Accused intended to cause or knew it to be likely to cause destruction of a building by such act.
- iv) The building was used as a place of worship or as a human dwelling or as a place for the custody of property.

10. The essential ingredients of offence punishable under

section **506** of Indian Penal Code are as follows:

1. The accused threatened someone with injury to his person, reputation or property, or to the person, reputation or property of another in whom the former was interested.
2. The accused did so with intent to cause alarm to the victim of offence;
3. The accused did so to cause the victim to perform any act which he was not legally bound to do.

Let us see how far the prosecution side has been able to establish the above requirements against the instant accused in this case.

11. PW-1 Sri Diba Bhumij has deposed in his evidence that, he knows both sides who are husband and wife. The incident took place about 3 years ago. He had heard that quarrel was broken out between the Informant and the accused and the whole house of the accused was burnt out. Informant left for her matrimonial home about 2 years ago and she has been staying at her paternal home at Numaligarh since then.

During his cross-examination, he has admitted that he has never seen them quarrelling with each other. The incident took place at night. He does not know anything about the incident. He does not know if informant is not staying with her parents right now.

12. PW-2 (Shima Ghatowar) has deposed in her evidence that she knows the informant and the accused. The accused is the husband of the informant. The incident took place about three years ago at night, At that time, she was sleeping at her

house. At around 11 p.m, she heard noise from the house of the accused. In the morning, after getting up, she witnessed that the house of the accused was burnt out.

In cross-examination, this witness has shown her ignorance about the actual occurrence.

13. PW-3 (Rumi Ghatowar, the informant) has deposed that the accused is her husband. They got married in the year 2016. They have been blessed with one male child. After 3-4 months of their marriage, her husband started consuming alcohol and then to create noise at home. He used to scold her and also threatened to kill her. The instant incident took place after two years of their marriage. On the date of occurrence, her husband came home under the influence of liquor. It was night at that time. Her husband tried to kill her and hence, she fled away along with her son. After half an hour, she came back and she witnessed that their house was totally burnt out. In the morning, she lodged the ejahar against her husband. Exhibit P-1/PW-3 is the ejahar and Exhibit P-1(1)/PW-3 is her signature. Police came to the place of occurrence and seized the ashes and certain half burnt articles from the place of occurrence. Exhibit P-2/PW-3 Seizure list and Exhibit P-2(1)/PW-3 is her signature. She has further deposed that she is now staying at her parents house. She went there just after the occurrence. Material Object A is the Ashes of her burnt house. She has witnessed the same in the Court.

In her cross-examination, she has admitted that her husband used to exchange heated altercations only with her.

He does not assault her. She did not witness the person who set fire in their house. She lodged the ejahar against her husband out of suspicion only.

14. A meticulous scrutiny of the materials available in case record reveals that P.W.3 is the Informant cum victim of this case. P.W.1 and P.W.2 are independent witnesses. A careful scrutiny transpires that all of the witnesses corroborate regarding the fact that the house of the accused and the Informant was completely burnt out. Hence, I do not find any difficulty in holding the view that, it was the residential house of the parties and that the same was completely burnt out for which instant proceeding has been initiated. Now let us see who was responsible for the same.

15. A careful study of the materials on record further transpires that, admittedly the P.W.1 and P.W.2 were not the eye witnesses of the occurrence. The ejahar depicts that the accused set fire on their house. But the evidence of the P.W.1 reveals that although she was present at the place of occurrence just before the occurrence, but she left the place and she did not witness the miscreant who set fire on their house. The different stands taken by the victim bring some sort of doubts regarding the involvement of the accused. Again, P.W.3 has admitted in her cross examination that, her husband used to exchange heated altercation only with her. Admittedly he does not assault her. Her ejahar divulges the factum of demand of dowry from her by the accused. But, she deviates her stand at the time of tendering her evidence

pertaining to this particular fact. She has further deposed that she lodged the ejahar against the accused out of suspicion only. This fact also brings some sort of doubts over the prosecution case. With this much of evidence only, I find it difficult to hold the accused guilty of the alleged offence. Furthermore, it is apparent that the evidence available on record does not attract the requirements of the alleged offences.

16. Keeping in view of the above discussion I find that, the prosecution side has failed to prove the case against the accused beyond all reasonable doubts. Hence, the point for determination is decided in negative and in favour of the accused. Accordingly, I find it proper to pass the following :

ORDER.

17. Keeping in view of the above discussion and observations, accused Probin Ghatowar is acquitted of his charge of an offence punishable under Sections 498A/436/506 of the Indian Penal Code and is set at liberty forthwith.

18. The period of bail bond furnished by the accused shall extend for a period of 06 months from today as per provision of section 437A Criminal Procedure Code.

19. Send back the G.R.case No.195/20 (PRC No.504/20) to the learned Committal Court along with a copy of this Judgment.

20. Send a copy of this Judgment to the learned District Magistrate as per section 365 of Criminal Procedure Code.

21. Seized articles, if any, be disposed off in due course, as per procedure of law.

Given under my hand and seal of this Court on this 4th day of March, **2024**.

(Smti.Dubori Dutta)
Asstt.Sessions Judge, Jorhat

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APPENDIX
LIST OF PROSECUTION/DEFENSE/COURT WITNESSES

A. Prosecution

<u>Rank</u>	<u>Name</u>	<u>Nature of Evidence</u>
PW-1	Diba Bhumij	Other witnesses
PW-2	Shima Ghatowar	"
PW-3	Rumi Ghatowar	Informant/victim

B. Defense Witness, if any

<u>Rank</u>	<u>Name</u>	<u>Nature of Evidence</u>
DW	NIL	NIL

C. Court Witness, if any

<u>Rank</u>	<u>Name</u>	<u>Nature of Evidence</u>
CW	NIL	NIL

LIST OF PROSECUTION/DEFENSE/COURT EXHIBITS

A. Prosecution

<u>Sl. No.</u>	<u>Exhibit No.</u>	<u>Description</u>
1	Exhibit P-1/PW-3	Ejahaar
2.	Exhibit P-2/PW-3	Seizure list.
3.		
4.		

B. Defense

<u>Sl. No.</u>	<u>Exhibit No.</u>	<u>Description</u>
1	NIL	

B. Court Exhibit

<u>Sl. No.</u>	<u>Exhibit No.</u>	<u>Description</u>
	NIL	

D. Material Objects

<u>Sl. No.</u>	<u>Exhibit No.</u>	<u>Description</u>
	NIL	

Dictated & corrected by me:

Asstt. Sessions Judge, Jorhat

Transcribed & typed by:

