

IN THE COURT OF THE SESSIONS JUDGE ::::UDALGURI

Present : Sri M. Kalita,
Sessions Judge,
Udalguri.

Crl. Appeal No. 24/2022

Jiten Boro.....Accused/Appellant.

-Vs-

State of Assam.....Respondent.

Appearance :

For the appellant : Mr. T. Basumatary, Advocate.

For the respondent: Mr. A. Basumatary, P.P.

Date of hearing : 21.9.2023

Date of judgment : 21.9.2023

J U D G M E N T

1. In this appeal the appellant Jiten Boro has assailed the judgment and order dated 15.10.2022 passed by learned JMFC, Udalguri in connection with GR case No. 863/2020 U/S 498 (A) IPC.

2. Being unfolded by the case record, the prosecution case is that the respondent had lodged an FIR before Dimakuchi PS on 10.8.2020 against the accused/appellant by stating, inter-alia, that due to having love affairs between themselves informant got married with the accused/appellant about two

and half years ago. But sometimes after their marriage the accused started torturing the informant physically as well as mentally. Even her mother-in-law and father-in-law could not restrain the accused/appellant. On 9.8.2020 at about 10 pm the accused/appellant came home under influence of intoxication and tortured her physically for which the informant had to lodge the FIR.

3. After receiving the aforesaid FIR the O/C, Dimakuchi PS registered a case vide Dimakuchi PS case No. 69/2020 U/S 498(A) IPC. The I.O. investigated the case. During the course of investigation, the I.O. arrested the accused/appellant and on close of the investigation the I.O. submitted the charge-sheet against the accused U/S 498(A) IPC.

4. On appearance of accused the copies of relevant document were furnished to the accused. Then the charge was considered and framed U/S 498A IPC. Then the particulars of the charge was explained and read over to the accused to which he pleaded not guilty and claimed to stand trial. During the course of trial, prosecution examined as many as 7(seven) PWs including the informant, medical officer and I.O. to bring home the case. Then accused was examined U/S 313 Cr.P.C. Defence case was total denial. No witness was examined by the defence and on close of the trial the learned trial court delivered the impugned judgment by convicting the accused/appellant with sentence for SI for 9

months and with fine of fine of Rs.1000/-, in default, S.I. for imprisonment for another 5 days for committing offence U/S 498(A) IPC.

5. On being highly aggrieved and dissatisfied with the impugned judgment, the accused/appellant has preferred this appeal amongst the following grounds:-

- (i) That the learned trial court has erred in law and facts in convicting the appellant;
- (ii) That the evidence on record is not found consistent so the order of conviction of accused/appellant is found not sustainable;
- (iii) That the informant herself left the house of the appellant without any reason;
- (iv) That there is no any eye witness of the case.
- (v) That, though the informant had gone to Dimakuchi on 9.8.2020 but she lodged the FIR on 10.8.2020;
- (vi) That, as per medical report the informant was examined on 9.8.2020 without any GDE;
- (vii) That, the mother of the appellant during the pendency of the case went to the residence of the informant to take her back to the matrimonial home but the informant refused to come back;
- (viii) That, the informant filed the case by stating some false allegation against the accused/appellant;

(ix) That the aggrieved party has been willingly living separately from the husband and filed the case for decree of divorce before the District Judge.

6. So, the appellant has prayed for setting aside the impugned judgment by considering the above grounds.

7. I have perused the evidence of PWs. The grounds of appeal has been mainly based on the points infirmities of the evidence on record. The further ground of accused/appellant is that though there is some serious inconsistency of the evidence even then the learned lower court convicted the accused/appellant.

8. So, to decide the merit of appeal, I find it necessary to discuss the evidence on record.

9. PW1, Rima Boro is the informant. She has deposed that she got married to the accused about two and half years ago and after three months of her marriage the accused started torturing her physically and mentally. The accused used to drink alcohol and physically tortured her. The accused demanded an amount of Rs 1 lakh from her. Her parents agreed to give an amount of Rs 50,000/- to him but he insisted that he should be given an amount of Rs 1 lakh. She lodged the FIR on 10.8.2020 as on 9.8.20 at about 10 PM the accused came home intoxicated and physically assaulted her and also drove her away from her matrimonial house. The

accused tore her clothes. She was injured on her lip and back. She has proved the FIR as Ext. P1.

10. During the cross-examination, PW1 has admitted that she did not write the FIR but only signed on it. She did not inform the police when the accused started to torture her after three months of their marriage. There was no written agreement with the accused assuring him that an amount of Rs 50,000/- would be given to him by her parents.

11. PW2, Sabitri Boro, the mother of the informant, has deposed that the accused used to torture the informant after drinking alcohol. He used to physically tortured the informant due to which she had to go to the police station to lodge the FIR against him. The clothes of the informant were torn and she was injured on her lips as well as her back. The accused used to demand money from her daughter.

12. During the cross-examination, PW2 has admitted that on the day when the FIR was lodged she did not see the accused assaulting the informant. The accused came to her house for three times to take away the informant with him but she did not send her as on previous occasions also she was sent with him but the same incidents were repeated with her.

13. PW3, Jonali Swargiary has deposed that on 10.8.20 she went to the hospital at night and saw that the clothes of the informant were torn and she was injured on her lips. The informant told her that the accused physically tortured her.

The informant was taken to the hospital by the police. The accused used to torture the informant physically for several times.

14. During the cross examination, PW3 has admitted that she did not see the accused physically torturing the informant. She did not see the accused physically torturing the informant on the day when she was taken to the hospital by the police.

15. PW4, Balendra Boro has deposed that he met the informant at the hospital as she was taken to the hospital by the police. She told him that she was physically assaulted by the accused and in order to save herself she went to the Dimakuchi police station. Many times the informant used to go to her parents house and when he enquired about it, the informant told him that she had to leave her husband's house as he used to physically torture her.

16. During the cross-examination, PW4 has admitted that the informant was his distant niece. He did not see the accused assaulting the informant.

17. PW5, Lagan Basumatary has deposed that the accused is her son and she did not see any physical assault over her daughter-in-law.

18. PW6, Gagan Ch. Deka is the investigating officer. He has deposed that on 10.8.2020 while he was posted as O/C at Dimakuchi PS on that day Rina Boro filed an FIR. Accordingly he registered the case vide Dimakuchi PS case No.69/2020 U/S 498A IPC and himself took the charge of investigation. He

conducted the as usual investigation and on completion of the investigation he submitted the charge-sheet under Section 498-A IPC against the accused. He has proved the Sketch map as Ext.P2 and the charge-sheet as Ext.P3.

19. During the cross-examination, PW6 has admitted that nobody stayed near the place of occurrence i.e the house of the accused and hence no witnesses could be found near the place of occurrence.

20. PW7, Dr. Bijoy Kr. Chakraborty has deposed that on 9.8.20 at about 11:30 PM he examined the informant and found abrasion, $\frac{1}{2}$ CM x $\frac{1}{2}$ CM on inside of upper lip on the left side, swelling of left side of upper lip. He has opined that the injury was simple, recent and was caused by blunt object. He has proved the medical report as Ext P4.

21. During the cross-examination, PW7 has admitted that the case number is not mentioned in the report. The victim was sent by the police for examination and the injury could be caused by falling too.

22. From the above discussion of evidence of PWs, it is found that the informant has stated in her evidence that accused came under influence of intoxication and physically tortured her. Even he demanded money from her. The accused demanded amount of Rs.1 lakh from her. In the beginning the parents of informant had agreed to give an amount of Rs.50,000/- to the accused but such fact was not stated by her in the FIR nor she was stated such fact in the

statement made by her before the police. So, no doubt the fact regarding the demand of money is the improved version of the victim. PW2 is only the mother of the informant. She has neither stated any fact regarding the demand of money nor she has stated that she had even witnessed the occurrence. Version of PW3 is that when she visited the hospital where the victim was treated. Then she saw the wearing cloth of the victim was in torn condition. The version of PW4 is only that due to physical assault committed by the accused the victim had to go to Dimakuchi PS. There is no sufficient material in the evidence of PW5. PW6 is the I.O. As per his version it is found that the FIR was lodged on 10.8.2020. PW7 is the Medical Officer.

23. So, for deciding the merit of the case the evidence of PW7 is very much important. The version of PW7 is that he examined the victim and found abrasion, $\frac{1}{2}$ CM x $\frac{1}{2}$ CM on inside of upper lip on the left side, swelling of left side of upper lip. The injury was simple, recent and was caused by blunt object. As per injury report, there was only abrasion in the upper lip. There is no any injury on the other part of the person. Moreover, on appreciation of evidence of informant, it is found that she has not described distinctly how she was tortured. Though she has alleged that she was tortured physically and mentally but no serious injury was detected on the person by Medical Officer. So, medical evidence is not sufficient enough to corroborate the prosecution version. If

the evidence brought on record is analysed in reference to the ingredients of offence U/S 498 A IPC then it is found that there is no specific explanation regarding the torture of cruelty committed by accused. The version regarding demand of dowry has not been established with cogent evidence. Hence, I do not find any reliable material to hold the views that accused subjected the victim to cruelty in order to meet the demand.

24. Moreover, regarding the demand of money, my view is that PWs are found totally inconsistent and not reliable. Due to lack of credible evidence, my view is that prosecution has miserably failed to prove the ingredients of U/S 498 A IPC for which my view is that the judgment passed by the learned lower court is found not sustainable as per law. Hence the grounds raised in the appeal is found having the merit and for which the appeal is deserved to be allowed and accordingly, the appeal is allowed and accused/appellant is acquitted.

25. Let a copy of this judgment be sent to the learned trial court alongwith the original case record.

26. Given under my hand and the seal of this court on this the 21st day of November, 2023.

Dictated and corrected by me

Sessions Judge,
Udalguri.

Sessions Judge,
Udalguri.

