

**IN THE COURT OF SESSIONS JUDGE, MAJULI AT
GARAMUR**

Present: Shri Jaspal Singh, AJS,
Sessions Judge, Majuli

Criminal Appeal No. 05/2024

(Against the impugned Judgment and Order dated 22/05/2024,
passed by the learned Chief Judicial Magistrate, Majuli in C.R. Case
No. 26/2022)

Sri Jiten Borah

S/o Sri Gobin Borah,

R/o Village Pulungani,

P.S. Jengraimukh, District- Majuli, Assam *Appellant*

-Vs-

1. State of Assam

(Represented by the Public Prosecutor, Majuli)

2. Smt. Sangita Borah

D/o Sri Mohendra Boruah,

R/o Potiori Gaon, P.O. Samaguri Satra,

P.S. Majuli, District- Majuli, Assam *Respondents*

Arguments heard on : 15/05/2025, 29/05/2025

Judgment delivered on : **11/06/2025**

Advocates appeared in the case: -

Shyamoli Goswami, Advocate, for the Appellant

Sri Uttam Saikia, Public Prosecutor, for Respondent No. 1

Sri Atul Saikia, for Respondent No. 2

JUDGMENT

1. This Criminal Appeal is directed against the Judgment
and Order dated 22/05/2024 passed by the learned Chief

Judicial Magistrate, Majuli in C.R. Case No. 26/2022 by which the appellant/accused Sri Jiten Borah was convicted under section 406 of IPC and was sentenced to undergo simple imprisonment for a period of 1 (one) year and to pay a fine of ₹20,000/- and in default of payment of fine, to undergo simple imprisonment for a term of another 2 (two) months.

2. The Prosecution case, in brief, is that the complainant, namely Smt. Sangita Borah, submitted a complaint petition no. 58/2022 against the accused Sri Jiten Borah stating therein that on 07/05/2019 the complainant and the accused married to each other based on their love affair, and thereafter they used to live in Hengerabari, Guwahati as husband and wife. Initially, for a few days they spent good times, but gradually the accused started abusing her on trivial matters. In between, they both came to Majuli and stayed at her matrimonial home. The family members of the accused did not like her and started committing cruelty upon her by demanding dowry. In the year 2020, during Bohag Bihu, after they had come to the matrimonial home in Majuli, her brother-in-law Sri Nabajit Borah severely assaulted her, inflicting grievous injury on her ear. He also beat on her head by the iron rod of the bed. Once Sri Nabajit Borah had administered pregnancy termination medicine to her by mixing it with water. That apart, the family members of the accused had conspired to kill her by administering poison and in that conspiracy, the accused's cousin Sri Biswa Borah was also involved. On 17/01/2022,

the family members of her husband confined the complainant inside a room and assaulted her by mocking her as lunatic/insane. On the next day, at about 4:00 AM, as she shouted so loudly, Sri Nabajit Borah and his wife opened the door out of fear. Immediately, the complainant left the house of the accused and by running and also by walking in between managed to reach her paternal home and took shelter at her paternal home. On 19/01/2022, she lodged an FIR at Majuli Police Station. She further alleged in the complaint petition that at the time of her marriage, her father had gifted to her *stridhan* articles (enumerated in the enclosed list), and though on 23/10/2022 she demanded the *stridhan* articles from her husband, he rebuked her and threatened to kill her if she came to his house asking for the *stridhan* articles. After the receipt of the complaint petition, learned Court examined the complainant under section 200 CrPC and finding prime facie materials cognizance was taken under section 406 of IPC against the accused Sri Jiten Borah. After the trial, learned Chief Judicial Magistrate, Majuli convicted and sentenced the appellant/accused as mentioned above.

GROUND RAISED IN THE MEMO OF APPEAL

3. Being highly aggrieved by the impugned judgment and order, the appellant/accused has preferred the present appeal on the following main grounds: -

1) Learned Court below failed to scrutinise the evidence carefully. PW3 is the younger brother of the complainant,

PW2 is a friend of PW3, and PW4 is a neighbour of the complainant. As they are interested witnesses, their statements are not genuine enough to be relied upon.

2) Learned Court below failed to scrutinize the evidence specifically regarding the proof of marriage between the complainant and the accused. The complainant had stated in her complaint petition that on 07/05/2019 she got into love marriage with the appellant. But PW2 and PW3 stated in their examination-in-chief that the complainant and the appellant were married on 08/05/2020 as per social rites and PW4 also stated that they got married in the year 2020, and as such the statements of PWs are not corroborative. Further, the complainant had not specifically deposed at what time said *stridhan* were given to her and by whom.

3) Learned Court below failed to take into consideration that the complainant (PW1) in her cross-examination stated that she has not submitted any document in this case to substantiate her marriage with the appellant. The appellant was thoroughly examined under section 313 CrPC where he stated that “the allegations are false, he never married to the complainant, the complainant is not his wife, there is no such *stridhan* property in his house.”

4) Learned Court below failed to take into consideration that the complainant did not mention the place of marriage in her cross-examination and also stated that she forgot the name of the priest. However, PW2 while being suggested

during cross-examination, stated that social marriage was conducted at the maternal house of the complainant.

5) Learned Court below failed to take into consideration that PW2, PW3 and PW4, who claimed to have taken the said *stridhan* articles from the house of the complainant to the house of the appellant, specifically mentioned in their deposition that they carried one wooden bed including some other articles. However, neither wooden bed is a part of the listed *stridhan* articles not the complainant mentioned in her complaint petition nor she mentioned in her deposition.

6) Learned Court below failed to take into consideration that during execution of search warrant in the house of the appellant, the Gaon Pradhan and the VDP were present along with police as witnesses. But the seizure witnesses were not examined by the prosecution side. PW3 has stated that he accompanied his sister (complainant) with the search warrant issued by the Court to the house of the appellant to recover *stridhan* property. PW3 also stated that the family members of the appellant committed mockery upon them by stating that they have thrown the furniture and other properties into the garbage. However, in support of his evidence, neither PW1 nor PW2 nor PW4 stated any such fact in their depositions and not corroborated the same.

7) Learned Court below erred in concluding that the prosecution side has led consistent evidence to show that it

has established the factum of entrustment of *stridhan* property to the accused. The prosecution side has, on the contrary, miserably failed to prove the guilt of the appellant regarding criminal breach of trust, hence the impugned judgment is liable to be cost and set aside.

POINT FOR DETERMINATION

4. The point which is required to be determined for a just decision of this appeal is as to whether the finding of the learned Trial Court holding the appellant/accused guilty of the offence under section 406 of IPC and convicting and sentencing him for the said offence calls for any interference in this appeal.

DISCUSSION, DECISION AND REASONS THEREFOR

5. At first, let me go through the depositions of witnesses examined in the case (C.R. Case No. 26/2022). The complainant had examined as many as four PWs, namely Smt. Sangita Borah (PW1), Sri Apurba Saikia (PW2), Sri Hemanta Baruah (PW3) and Sri Nilutpal Saikia (PW4).

6. PW1, the complainant, deposed in her evidence that she has lodged the case against her husband. She had lodged the case to get back *stridhan* articles. Through the search warrant she had recovered two blankets, two bed sheets, two mekhela, two coffee cups. But she did not get back her remaining articles, such as marksheet, certificate, gold necklace, one chain, three gold rings, three earrings, two pairs of silk clothes (paat and muga), five pairs of

Mising clothes, ten pairs of cotton clothes, one raw gold set, three brass utensils, five numbers of glass, one dinner set. The accused has retained those articles with him. He did not give her back those articles though she had asked for them back. She wants the accused to be punished. During her cross-examination, besides denying some Defence suggestions, PW1 deposed that she did not mention in her complaint petition regarding the place where her marriage was solemnized and who was the priest of their marriage. She forgot the name of the priest. She has not submitted any document in this case to substantiate her marriage with the accused.

7. PW2 Sri Apurba Saikia deposed in his evidence that he knows both the parties. The complainant and the accused were married on 08/05/2020 as per social rites. On the day of 'Khubakhuboni' ritual, he had gone to the house of the accused along with the brother of the complainant namely Hemanta Baruah. They hired a DI vehicle and carried one wooden bed, blanket, bedsheet, brass utensils to the house of the bridegroom. The complainant could not recover the *stridhan* properties despite house search made by the police. Hence, the complainant lodged this case. During his cross-examination, besides denying some Defence suggestions, PW2 deposed that he is a friend of the younger brother of the complainant namely Sri Hemanta Baruah.

8. PW3 Sri Hemanta Baruah deposed in his evidence that he knows both the parties. The complainant is his elder

sister. They were married on 08/05/2020 as per social rites. On the day of 'Khubakhuboni' ritual, he had gone to the house of the accused along with Apurba Bora. They hired a TATA ACE vehicle and carried one wooden bed, blanket, bedsheet, brass utensils to the house of the bridegroom. One Mr. Santu Sahu and Nilutpal Saikia accompanied him as they were his friends in the TATA ACE vehicle. They offered one gold chain, gold earrings, and one gold ring as *stridhan* property to their sister. He accompanied his sister along with the search warrant issued by the Court to the house of the accused to recover the same. The first party could not recover the *stridhan* properties despite house search made by police. Rather, the family members of the accused person committed mockery upon them by stating that they have thrown the furniture and other properties into the garbage. They will see what they (complainant side) can do. Hence, his sister has lodged this case. During his cross-examination, besides denying some Defence suggestions, PW3 deposed that he is the younger brother of complainant. They have not made Santu Sahu as witness in this case. He did not file any case against the accused side regarding non-recovery of the *stridhan* articles.

9. PW4 Sri Nilutpal Saikia deposed in his evidence that he knows both the parties. Both parties solemnized their marriage in the year 2020. One Mr. Santu Sahu, Hemanta Baruah and another person along with him took the *stridhan* property in a TATA ACE vehicle from the house of

the complainant to the house of the accused persons. The *stridhan* properties included one bed, one trunk consisting of utensils, several clothes etc. He also knows that few ornaments and jewellery were also carried by the first party at the time of her marriage. Later, relationship between both parties became estranged. The complainant was compelled to leave the matrimonial house. Now she is taking shelter at her parental house. He accompanied the police party at the time of execution of the search warrant in the house of the accused persons. Accused persons pretended that they do not know the first party. They also informed that they had thrown away the *stridhan* property somewhere else. Police recovered few properties but could not collect the documents from the possession of the accused persons. Accused persons also threatened them, stating that they (complainant side) cannot do anything to them. During his cross-examination, besides denying some Defence suggestions, PW4 deposed that he is neighbour of the complainant. He does not know if the complainant side has made Santu Sahu as witness in this case or not. Few articles were recovered, but the documents were not recovered. His name was not listed in the complaint petition as witness.

10. Section 406 of the IPC deals with the offence criminal breach of trust. When it comes to *stridhan* articles of a woman/wife, section 406 of IPC is often invoked in matrimonial disputes, especially where the wife alleges that

her *stridhan* was misappropriated or retained unlawfully by the husband or his family. *Stridhan* is exclusively the property of the wife, and she has an absolute right to use and dispose of it as she pleases. To constitute an offence under section 406 of IPC with respect to *stridhan* articles, the following must be proved: (1) entrustment of property (*stridhan* articles entrusted to husband/in-laws; and (2) dishonest misappropriation or conversion to their own use.

11. In **Pratibha Rani v. Suraj Kumar**, (1985) 2 SCC 370, the Hon'ble Supreme Court held that stridhana remains the exclusive property of the woman, and its retention by husband or in-laws after demand amounts to criminal breach of trust under section 406 of IPC.

12. It was observed by the Hon'ble Supreme Court in **Pratibha Rani** (supra) as follows: -

20. We are clearly of the opinion that the mere factum of the husband and wife living together does not entitle either of them to commit a breach of criminal law and if one does then he/she will be liable for all the consequences of such breach. Criminal law and matrimonial home are not strangers. Crimes committed in matrimonial home are as much punishable as anywhere else. In the case of stridhan property also, the title of which always remains with the wife though possession of the same may sometimes be with the husband or other members of his family, if the husband or any other member of his

family commits such an offence, they, will be liable to punishment for the offence of criminal breach of trust under Ss. 405 and 406, I.P.C.

13. It was further observed by the Hon'ble Supreme Court in **Pratibha Rani** (supra) as follows: -

27. To sum up, the position seems to be that a pure and simple entrustment of stridhan without creating any rights in the husband excepting putting the articles in his possession does not entitle him to use the same to the detriment of his wife without her consent. The husband has no justification for not returning the same articles as and when demanded by the wife nor can he burden her with losses of business by using the said property which was never intended by her while entrusting possession of stridhan. On the allegations in the complaint, the husband is no more and no less than a pure and simple custodian acting on behalf of his wife and if he diverts the entrusted property elsewhere or for different purposes he takes a clear risk of prosecution under S. 406 of the IPC. On a parity of reasoning, it is manifest that the husband, being only a custodian of the stridhan of his wife, cannot be said to be in joint possession thereof and thus acquire a joint interest in the property.

14. In **Rashmi Kumar v. Mahesh Kumar Bhada**, (1997) 2 SCC 397, wherein the position of wife or woman being the sole authority in respect of stridhan was emphatically

stated, the Hon'ble Supreme Court observed that, "... properties gifted to her before the marriage, at the time of marriage or at the time of giving farewell or thereafter are her stridhana properties. It is her absolute property with all rights to dispose of at her own pleasure. He has no control over her stridhana property. A husband may use it during the time of his distress but nonetheless he has a moral obligation to restore the same or its value to his wife. Therefore, stridhana property does not become a joint property of the wife and the husband and the husband has no title or independent dominion over the property as owner thereof."

15. So far as burden of proof is concerned, the prosecution must prove entrustment of *stridhan* to the accused. Once entrustment is established, burden shifts to the accused to explain the whereabouts or return of the articles. In **State of H. P. v. Karanvir**, (2006) 5 SCC 381, the Hon'ble Supreme Court has held as follows: -

10. The actual manner of misappropriation, it is well settled, is not required to be proved by the prosecution. Once entrustment is proved, it was for the accused to prove as to how the property entrusted to him was dealt with in view of Section 405 of the IPC. If the respondent had failed to produce any material for this purpose, the prosecution should not suffer therefor.

16. Coming to the case at hand, from the depositions of PW1, PW2, PW3 and PW4, the offence under section 406 of IPC (criminal breach of trust) is clearly established against the accused in respect of the *stridhan* articles of the complainant. PW1, the complainant, has specifically stated that she had entrusted various *stridhan* items, including gold ornaments, utensils, bed, bed sheets, blankets, mekhela, important documents etc., to the matrimonial home at the time of her marriage, and that these items remained in the custody of the accused. She made repeated demands for their return, but the accused failed to return the articles. Though a search warrant issued by the learned Court led to the recovery of a few of the listed items, several key *stridhan* articles, particularly valuable ones such as gold jewellery and educational documents, were not recovered. The testimonies of PW2 (a family friend), PW3 (her brother), and PW4 (an independent neighbour) corroborate the fact that such *stridhan* articles were indeed delivered to the matrimonial home at the time of marriage, and they confirm that during the search by police pursuant to the search warrant, the accused's family claimed to have discarded the items and threatened them. While PW3 deposed that the family members of the accused committed mockery upon them by stating that they have thrown the furniture and other properties into the garbage and threatened by saying that they will see what they (complainant side) can do, PW4 deposed that the accused persons pretended that they do not know the

complainant and informed that they had thrown away the *stridhan* property somewhere else and also threatened them by saying that they (complainant side) cannot do anything to them. This conduct clearly suggests dishonest misappropriation or refusal to return the entrusted property, which constitutes criminal breach of trust. On the other hand, the accused whose plea has been of a total denial of marriage, could not offer any plausible explanation of the material incriminating circumstances put to him during his examination under section 313 CrPC. A perusal of the impugned Judgment and Order shows that the learned Trial Court considered the evidence presented in the case in its proper perspective and rightly arrived at the decision of the case, convicting and sentencing the accused under section 406 of IPC.

17. So far as the grounds raised in the appeal are concerned, let me deal with the grounds (set out in paragraph 3 of this Judgment) one by one.

Ground 1: The contention that PW2 (friend of PW3), PW3 (complainant's brother), and PW4 (complainant's neighbour) are "interested witnesses" and hence their testimony should be discarded is legally unsustainable. It is a settled principle of law that the testimony of a related or known witness cannot be discarded solely on the ground of relationship or acquaintance, if their evidence is otherwise consistent, credible, and corroborated by surrounding facts. In matrimonial disputes, it is usual that the witnesses are

either family members or persons closely associated with the parties. In the case at hand, the witnesses consistently deposed about the occurrence of marriage, the delivery of *stridhan* items to the accused's house, and the subsequent refusal of the accused to return the same. It is worth noting that PW4 is an independent neighbour, and his testimony lends additional weight to the prosecution case. Therefore, the above ground is not worth accepting.

Ground 2: The alleged discrepancy regarding the date of marriage is not sufficient to discredit the entire prosecution case. The variation appears to be a minor factual inconsistency which could arise from memory lapse or error in narration. Importantly, all PWs consistently confirmed that a social marriage did occur between the complainant and the accused, and that *stridhan* was delivered at the time of marriage. Furthermore, though the exact time or person delivering the *stridhan* was not specified in minute detail by PW1, the factum of delivery of the *stridhan* and entrustment is clearly supported by PW2, PW3, and PW4. Hence, the above ground is also not worth accepting.

Ground 3: The absence of a documentary proof regarding marriage does not nullify the case under Section 406 IPC. Even if the formal marriage is disputed, what is relevant is the entrustment of property to the accused and his dishonest retention or refusal to return the same. The consistent oral evidence of PW2, PW3 and PW4 and the issuance of a search warrant by the Court, leading to only

partial recovery of articles, indicate constructive possession and dishonest withholding of the *stridhan* articles by the accused. The accused's blanket denial in his 313 CrPC statement is not supported by any evidence or rebuttal testimony from his side. Moreover, as per the testimonies of PW3 and PW4, during the police search (pursuant to the search warrant), the accused and his family members claimed to have "thrown the furniture and other properties into the garbage" and to have "thrown away the *stridhan* property somewhere else" and stated that the complainant "cannot do anything." This conduct implies prior knowledge and custody of the *stridhan* articles, contradicting their claim of no marital relationship. The above ground is, therefore, not worth accepting.

Ground 4: The omission by the complainant in naming the place of marriage or the priest is not material to the offence under section 406 of IPC. The issue before the Court was not the legality or formality of the marriage, but whether *stridhan* articles were entrusted to the accused and whether he misappropriated or dishonestly retained them. Furthermore, in the case at hand all prosecution witnesses consistently stated that the parties were married to each other. Further, the very fact that a few of the *stridhan* items were recovered from the house of the accused during the search pursuant to search warrant, suggests that the complainant had lived together with the accused. Therefore, the above ground is also not worth accepting.

Ground 5: The fact that a wooden bed was mentioned by PW2, PW3, and PW4 but not listed in the original complaint or stated by PW1 does not affect the core allegation. The omission by PW1 is, at best, a minor lapse, and does not negate the overall chain of events indicating criminal breach of trust. The bed forms part of the household goods typically included in *stridhan*, and its mention by PW2, PW3 and PW4 corroborates the entrustment. Pertinent it is to mention here that what PW2, PW3 and PW4 stated in their testimonies regarding the taking of *stridhan* articles to the house of the accused is their direct evidence as they stated that they all had taken the *stridhan* articles to the house of the accused on the day of 'Khubakhuboni' ritual. The above ground is, therefore, not tenable.

Ground 6: The non-examination of seizure witnesses (Gaon Pradhan or VDP members) is not fatal to the prosecution case. The search and seizure was conducted pursuant to the search warrant issued by the Court, which lends credibility to the procedure followed. The presence or absence of independent seizure witnesses does not override the direct testimony of PW3 and PW4 who were very much present during the search. Moreover, while PW3 explicitly stated that the accused's family committed mockery upon them by saying that they had thrown the articles in the garbage, PW4 also corroborated the hostile attitude of the accused's family and their denial of knowledge of the complainant. Minor differences in exact words do not

amount to contradiction; rather, they reflect natural variance in recollection. The above ground is also, therefore, not acceptable.

Ground 7: Contrary to the claim of the accused, the prosecution has succeeded in establishing entrustment of property, the refusal to return despite demand, and the dishonest conduct of the accused, which are the essential ingredients of Section 406 IPC. The consistent evidence of four witnesses, partial recovery during the search by means of search warrant, and the accused's failure to provide a credible explanation in his 313 CrPC statement all point towards dishonest misappropriation. Hence, there is no merit in the argument that the prosecution has failed to prove its case.

18. In view of the foregoing discussion, the Point for Determination in this appeal is decided in negative. The finding of the learned Trial Court in convicting the appellant/accused of the offence under section 406 of IPC does not warrant any interference from this Court. The sentence imposed on the appellant/accused by the learned Trial Court for the above offence is also found to be justified in the facts and circumstances of the case and does not warrant any interference from this Court. The appeal is, therefore, liable to be dismissed, upholding the finding and sentence in the impugned Judgment and Order.

ORDER

19. This Criminal Appeal stands dismissed on contest.

20. The impugned the Judgment and Order dated 22/05/2024 passed by the learned Chief Judicial Magistrate, Majuli in C.R. Case No. 26/2022 is hereby confirmed and upheld.

21. Send back the records of C.R. Case No. 26/2022 to the learned Trial Court along with a copy of this Judgment.

22. The appellant/accused is directed to surrender before the learned Trial Court within 30 (thirty) days from today to enable the learned Trial Court to execute the sentence imposed against him.

Given under my hand and the seal of this Court on this the 11th day of June, 2025.

**Sessions Judge,
Majuli**