

*BEFORE THE CHIEF JUDICIAL MAGISTRATE,*  
*UDALGURI :: ASSAM*

**G.R. CASE NO. 548 of 2015**  
**(U/S- 498(A) IPC)**

*STATE*

*-VS-*

*SRI NARAYAN KALITA*

*Resident of*  
*Village- Dagiapara,*  
*PS- Sipajhar*  
*Dist. Darrang, Assam.*

*-----Accused person.*

*Present: Shri Gitali Rabha, A. J. S.*

*Advocate for the Prosecution : Mr. A. Basumatary*

*Advocate for the Defence : Mr. D. Saharia*

**Evidence recorded on : 13-5-18, 18-6-18, 22-6-18, 17-8-18**

**Argument heard on : 30-1-18, 02-02-18**

**Judgment delivered on : 05-02-2018.**

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

1. The prosecution case, in brief is that, informant Smt. Meghali Das had lodged an ejahar before the CJM, Udalguri on 27-05-2015 stating inter-alia that she was socially married with the accused Narayan Kalita and after her marriage,

she was taken to his quarter at Bhutiachang tea garden and there they lived as husband and wife. She further reported that they were blessed with one girl child. She disclosed that her grievance, is that, the accused started to demand Rs. 2,00,000/- (Rupees two lakhs) and caused her mentally agony by ridiculing her for bringing low standard marriage articles and forced her to bring new articles from her parents. The accused subjected her to physical and mental torture upon her to meet his demand and he sold of all her gold ornaments at Rs. 60,000/- (Rupees sixty thousand) only and misappropriated the whole money. The informant further stated that due to constant atrocities, her father sold one(1) bigha of land and gave the accused Rs. 50,000/- (Rupees fifty thousand) only on 08-08-2013 at Mazbat, but the accused was not satisfied with that money and again subjected her to torture and finally on 15-11-2014 at about 9/9-30 AM the accused brutally assaulted her and drove her out from her matrimonial house and since then she had to take shelter at her parents' house. She further reported that on 28-04-2015 the accused had visited her parent's house and severely assaulted her for not arranging the demanded money and when she made hue and cry, the neighboring people came to her rescue and the accused had fled away. Hence she filed this case.

2. The ejahar was forwarded to OC, Panery PS to register and investigate the case under proper Sections of law. After receiving the aforesaid petition, the Officer-in-Charge of Panery police station registered a PS case vide Panery PS case no. 36 of 2015 u/S 498(A) IPC. The I/O investigated the case, recorded the statement of other material witnesses and after completing the investigation submitted the charge sheet against the accused Narayan Kalita u/S 498(A) IPC vide CS No. 27 of 2015 dated 31-08-2015.
3. On the basis of the charge sheet, cognizance of offence was taken under Section **190 (1)(b)** of the CrPC. The process was issued for causing appearance of the accused person before the Court. The accused appeared. Then the copies of relevant documents were furnished to the accused. Considering the relevant documents of case record, charge u/S 498(A) IPC

was framed against the accused. The content of charge u/S 498(A) IPC was read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

4. During trial, the prosecution had examined six (6) PWs including the informant. The accused person had been examined u/S 313 Cr.P.C. Defence had not adduced any evidence. Argument had been heard from both sides.
5. I have considered the evidence on record and the arguments advanced. For the purpose of clarity, the following points for determination is hereby framed:
6. **POINTS FOR DETERMINATION OF THE CASE:** (i) Whether the accused being the husband of informant Smt. Meghali Das after her marriage, subjected her to cruelty both physically and mentally by demanding Rs. 2,00,000/- (Rupees two lakhs) as dowry and also by ridiculing her for bringing low standard marriage articles with her and drove her out from her matrimonial house and thereby committed the offence punishable u/S 498(A) IPC?
7. **DISCUSSION, DECISION AND REASONS FOR THE DECISION:** The prosecution had examined six(6) witnesses:

PW 1 Smt. Meghali Das (informant)

PW 2 Sri Prabhat Das

PW 3 Smt. Rekha Rani Das

PW 4 Sri Munindra Sarma

PW 5 Md. Shah Jamal Ali and

PW 6 SI Naren Chandra Swargiyari.

8. For convenience, let me go through the provision of Section 498 A IPC.  
***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. Let me start with the deposition of the victim Smt. Meghali Das(PW-1), the complainant. She had stated in her deposition that the accused is her husband and they got married on 14-07-2014 and they were blessed with one girl child. PW 1 stated that at the time of marriage, the accused was working at Bhutiachang Tea Estate that during her conjugal life at Bhutiachang Tea Estate, the accused started to demand Rs. 2,00,000/- (Rupees two lakhs) and other articles and when she could not fulfill his demand, the accused started to torture upon her. Thereafter, so deposed PW 1 that her husband got a job as a TET teacher in an LP School (Dhansri) at Mazbat and accused took her to his rented house at Mazbat and there also he had subjected her to inhuman physical torture. Thereafter, the accused

sold her gold ornaments and her(PW1) her father gave him Rs. 50,000/- (Rupees fifty thousand), but the accused did not change his behaviour and continued his atrocities upon her. When she could not bear his atrocities, she left her matrimonial house and took shelter at her parent's house. It is testified that on 28-04-2015 at about 12-30 PM the accused came to her parent's house when she along with her daughter and sister were at home and beat her up and this witness deposed that hearing her cries, the nearby people came and obstructed the accused and the matter was informed to police.

11. During cross-examination PW 1 had stated that her husband served a legal notice upon her, asking her to return to his house. She testified that she had lodged the ejarah after receiving the notice and the accused had also filed a case against her parents which was still pending. She explained that her father gave him Rs. 50,000/- (Rupees fifty thousand) dowry, at Orang in a hotel and she was present during the payment. During cross-examination, she stated that she had appeared in her BA examination 5<sup>th</sup> semester, the examination was held in April and ended two days prior to the alleged occurrence. She further stated that she is not willing to continue her conjugal life with the accused and hence filed the divorce suit against him.
12. The next two witnesses, PW 2 Sri Prabhat Das and PW 3 Smt. Rekha Rani Das are the parents of the victim. They had corroborated the evidence of PW 1 and stated in his deposition that the accused had subjected both physical and mental torture upon their daughter(PW1). They deposed that the accused demanded Rs. 2,00,000/- (Rupees two lakhs) and they had paid Rs. 50000/- . They further stated that the accused is very suspicious nature man, and he(accused) suspected that his wife (PW1) was having affair with other persons and so he used to lock her inside the room. They further corroborated PW 1 that the accused had sold the gold ornaments and misappropriated the money. They further deposed that several times they along with other villagers tried to console his daughter and managed to send

her to the house of the accused, but accused did not mend his behaviour. PW 2 and PW 3 deposed that on 28-04-2017 the accused came to their house and assaulted their daughter(PW1), in presence of his grand daughter and younger daughter.

13. During cross-examination PW 2 had stated that a case is pending against his wife filed by the accused. PW 3 had stated that since November, 2014 the accused came to her house to take her daughter back to his house; but they did not send her back with him.
14. Now let me go through the evidence of the independent witnesses. PW 4 Sri Munindra Sarma had stated that on 28-04-2015 at about 1-00 PM the sister of Meghali Das called him over his mobile phone informing about some untoward incident had happened in their house. He further testified that he immediately came there and saw the accused and co-villagers. He testified that he had not seen the accused assaulting the informant.
15. PW 5 Md. Shah Jamal, corroborated PW-4 and stated that on 28-04-2017 at about 12-30 PM he saw the mother-in-law of the accused was coming from her school to her house crying and uttering that her daughter had been assaulted. She told him that the accused had assaulted her daughter and so he also went to their house and found large number of people there. He testified that the family members of the informant were crying and other people were giving some suggestions to them not to quarrel. Then PW 5 went away.
16. During cross-examination the independent witnesses PW-4 and PW 5 had stated that they had not seen any person assaulting to the informant.
17. PW 6 SI Nripen Chandra Swargiyari had stated that he had investigated the case, visited the place of occurrence, recorded the statement of the victim u/S 161 CrPC and other material witnesses, that he had drawn the sketch map and after completion of investigation, submitted the charge-sheet

against the accused u/S 498(A) IPC.

18. The learned Additional PP submitted that the prosecution witnesses has remained consistent that they had paid dowry of Rs. 50,000/- to the accused but the accused was not satisfied with Rs. 50,000/- and demanded for more money and caused physical torture upon PW-1, to coerce further dowry. He further submitted that the independent witnesses had supported the victim and stated that they were witness to the incident of 28-4-2017 and he argued that the prosecution has established the case successfully and prayed that the accused may be punished accordingly.
  
19. On the other hand, learned counsel of defence has submitted that though the victim PW 1 has alleged that her father had paid Rs. 50,000/- (Rupees fifty thousand) to the accused, but she could not describe the place and mode of payment. It was pointed out that in her FIR she had reported that her father had paid money at Mazbat and in her statement she had deposed that her father had paid Rs. 50,000/- (Rupees fifty thousand) at Orang. It was further argued that PW 2 had stated in his chief that he had paid Rs. 50,000/- (Rupees fifty thousand) to the accused; but during cross-examination he could not remain consistent and admitted that he had not paid any money to the accused. It was further pointed out that PW 3 stated that PW 2 had paid Rs. 50,000/- (Rupees fifty thousand) to the accused by selling a plot of their land, but in her cross-examination she had stated that she did not state before police that her husband had sold a plot of their land and collected the money. It was argued that PW 6 the I/O of this case did not support the deposition of the PW1, PW2 and PW 3 and stated that PW 3 had not stated before him about any payment of money in her statement. It was submitted by defence that , in fact, the victim acknowledge that even after her marriage she was allowed to continue her studies and she has appeared for 5<sup>th</sup> semester examination due on April 2015 and this fact had been supported by the deposition of PW 2 the father of the victim that PW 1 came back to his house on the month of November, 2015 to prepare her 5<sup>th</sup> semester examination. It was further argued by the learned counsel that the

accused had put force upon the victim to resume their conjugal life and he had visited her house to bring her; but when she refused to come back with him he had filed a case for restitution of their conjugal life. The defence further argued that the informant in stead of responding the notice, filed a divorce case against the accused and this fact had been supported by PW 2 in his deposition. Learned counsel further submitted that in the statement of PW 1 though she alleged that her gold ornaments were sold by the accused, but she did not describe the ornaments which were given to her at the time of her marriage or which she purchased in the relevant time. The independent witness PW 4 and PW 5 did not support the deposition of PW 1. Learned counsel of defence concluded by submitting that the prosecution witnesses had failed to prove the charge against the accused and hence the accused may be acquitted from the charge.

20. **Appreciation of Evidence:** Considering the submission of both sides, I am opinion that though, there was allegation that PW1, PW2 and PW3 had paid the dowry of Rs. 50,000/-(Rupees fifty thousand) only to the accused, but the evidence is bland. There is no description about the mode of payment, date of payment, place of payment etc. I appreciate that in family dispute it may not be possible for the wife to remember each and every dates, because at the time of paying money to the accused, they must not have been under the impression that one day they had to file a case but in a criminal case some details are on absolute necessity for penal consequence is involved. Here, the issue of interested witnesses had been raised and the defence had pointed to the un-trustworthiness of the witnesses, the Court has to be careful. PW1, PW2 and PW3 during cross-examination could not remain consistent to their version and then doubt arises as regard to their credibility.
21. Now coming to the second incident that the accused had publicly assaulted PW1 on 28.04.2017, even this incident had not been supported by independent witnesses PW4 and PW5. These two (2) independent witnesses

had stated that there was a quarrel and huge gathering of people, but they had not seen the accused assaulting the victim PW1. In that view of the matter, I hold that prosecution has failed to prove the charge u/S 498 (A) IPC. Hence, the accused stands acquitted from the charge.

**O R D E R**

As the prosecution has failed to prove the charge against the accused, I hereby acquit the accused from the charge under Section 498 A IPC and set him at liberty. Bail bond shall remain in force for another six months as per provision of Section 437 CrPC.

Inform the District Magistrate, Udalguri.

The judgment is given under my hand and seal of this Court on this 05<sup>th</sup> day of February, 2018.

Dictated and corrected by me:

**(G. Rabha)**  
Chief Judicial Magistrate.  
Udalguri, Assam.

**(G. Rabha)**  
Chief Judicial Magistrate  
Udalguri, Assam.

**APPENDIX**

- A. Prosecution witnesses : PW 1 Smt. Meghali Das (informant)  
PW 2 Sri Prabhat Das  
PW 3 Smt. Rekha Rani Das  
PW 4 Sri Munindra Sarma  
PW 5 Md. Shah Jamal Ali and  
PW 6 SI Naren Chandra Swargiyari.
- B. Defence witness : Nil.
- C. Documents exhibited : Ext. 1 – FIR.  
Ext. 2 – Sketch map.

Chief Judicial Magistrate  
Udalguri, Assam.