

GAHC010233602013



2025:GAU-AS:7164

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./89/2013

SRI SUBHASH HAZARIKA @ DHAN HAZARIKA
S/O SRI HANHIRAM HAZARIKA R/O GAINADI P.S. SILAPATHAR, DIST.
DHEMAJI, ASSAM,

VERSUS

THE STATE OF ASSAM,
REP. BY THE ADDL. P. P., ASSAM.

Advocate for the Petitioner : MR.P. K MUNIR, LD. ADV.

Advocate for the Respondent : MR. R. J. BARUAH, LD. ADDL. P.P, ASSAM, ,

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

Date of hearing : 06.05.2025

Date of Judgment : 03.06.2025

JUDGMENT & ORDER (CAV)

Heard Mr. P. K. Munir, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State respondent.

2. This application, filed under Sections 397, *read with* Sections 401 and 482 of the Cr.P.C, seeks to set aside the Judgment and Order dated 20.12.2012 passed by the learned Sessions Judge, Dhemaji, in Criminal Case No. 36(4)/2012. The order upheld and modified the Judgment dated 29.09.2012 passed by the learned Additional Chief Judicial Magistrate, Dhemaji [in short 'Addl. CJM], in G.R. Case No. 541/2012. The petitioner was originally convicted under Section 498A IPC and sentenced to 3 years' simple imprisonment [S.I] and a fine of Rs.10,000/-, in default of which he was to serve another 6 (six) months' S.I. The Sessions Judge modified the sentence to 6 months' S.I. and a fine of Rs.2,000/-, with a default sentence of 1 month's S.I.

3. The prosecution case, in brief, is that the complainant, Smti Rini Hazarika, lodged an FIR on 04.07.2012 before the Officer-in-Charge, Sissiborgaon Police Outpost, under Silapathar Police Station, alleging, *inter alia*, that the accused/petitioner, who is her husband started subjecting her to both physical and mental cruelty demanding dowry, just one month after their marriage. She further alleged that on 03.07.2012, the accused/petitioner drove her out of her matrimonial home, causing physical injuries on her person. Having no

alternative, she sought shelter at her parental home. It was further alleged that on the same day, the accused visited the residence of his in-laws and attempted to set fire to their house. Additionally, he allegedly threatened the complainant with dire consequences.

4. Upon receipt of the FIR, the In-Charge of the Sissiborgaon Police Outpost made a General Diary Entry, G.D.E. No. 59 dated 04.07.2012, and entrusted an Assistant Sub-Inspector of Police with the investigation. The FIR was forwarded to the Officer-in-Charge of Silapathar Police Station, upon which a case was registered as Silapathar P.S. Case No. 228/2012 under Sections 498A/436 of IPC on 04.07.2012. After the completion of the investigation, the IO submitted a charge sheet against the accused/petitioner under Sections 498A/436 of the IPC. Upon submission of the charge sheet, the accused/petitioner appeared before the Court of the Id. Addl. CJM, pursuant to summons. As one of the offences (Section 436 IPC) was triable exclusively by the Court of Sessions, the case was committed to the Court of the learned Sessions Judge, Dhemaji. However, upon consideration of the charges and perusal of the case record, the case was transferred to the Court of the Id. Addl. CJM, under Section 228(1) of the Cr.P.C., after framing a charge solely under Section 498A of IPC against the accused/petitioner. Accordingly, the learned Trial Court framed the charge under Section 498A IPC.

5. During the trial, the prosecution examined five (5) witnesses, including the victim and the IO. The defence did not examine any witnesses and took the plea of denial. After hearing the arguments from both sides, the learned Id. Addl. CJM, by Judgment and Order dated 29.09.2012, convicted the petitioner under Section 498A IPC and sentenced him to undergo S.I. for 3 (three) years and to pay a fine of Rs. 10,000/- (Rupees ten thousand), and in default of

payment of the fine, to undergo S.I. for a further period of 6 (six) months. Aggrieved and dissatisfied by the said Judgment and Order dated 29.09.2012, the petitioner preferred an appeal, being Criminal Appeal No. 36(4)/2012, before the learned Sessions Judge, Dhemaji. The Appellate Court dismissed the appeal by affirming the conviction but modified the sentence vide its Judgment and Order dated 20.12.2012. The petitioner was sentenced to undergo S.I. for 6 (six) months and to pay a fine of Rs. 2,000/- (Rupees two thousand), and in default, to suffer S.I. for 1 (one) month.

6. Being highly aggrieved and dissatisfied with the Judgment and Order dated 20.12.2012 passed by the learned Sessions Judge in Criminal Appeal No. 36(4)/2012, whereby the Judgment and Order dated 29.09.2012 passed by the Id. Addl. CJM in G.R. Case No. 541/2012 (SLP), convicting and sentencing the petitioner under Section 498A of the IPC, was affirmed with modification, the petitioner has preferred the present revision petition.

7. It is submitted by Mr. Munir, learned counsel for the petitioner, that both the Id. Addl. CJM and the learned Sessions Judge erred in passing the impugned orders and sentences. He contended that the charge was not properly framed under appropriate sections of law. He further submitted that the learned Courts below failed to consider that the accused/petitioner and the victim were never legally or socially married; hence, the conviction under Section 498A IPC is bad in law. On this ground alone, the Judgment and Order dated 20.12.2012 passed by the learned Appellate Court deserves to be set aside and quashed.

8. Mr. Munir also submitted that while framing the charge, the learned Trial Court presumed that the accused/petitioner was the husband of the victim who was allegedly subjected to cruelty for dowry. He pointed out that one essential ingredient of Section 498A IPC is that the victim woman must be legally married

to the accused. Section 5(iii) of the Hindu Marriage Act, 1955 provides that the bride must have completed the age of 18 years and the bridegroom 21 years at the time of marriage. A violation of this provision is punishable with simple imprisonment for up to fifteen days, or with a fine up to one thousand rupees, or with both. In the present case, it is admitted that the alleged victim was only 14 years old and the petitioner was 20 years old at the time of the alleged marriage. Thus, the legal validity of the marriage is questionable. Further, the definition under Section 498A IPC clearly requires that the woman must be "married" to the person. Since, in this case, the alleged marriage was neither valid nor proven, the petitioner cannot be considered her husband. This vital aspect was not considered by either the learned Trial Court or the learned Appellate Court.

9. He further submitted that the evidence of P.W.1 (the complainant) does not corroborate the statements of other witnesses and that there are material contradictions in their testimonies. Consequently, the conviction cannot be sustained solely based on P.W.1's evidence. Moreover, the IO did not conduct any inquiry regarding the legality of the marriage. Mere cohabitation does not constitute a legally recognized husband and wife relationship. P.W.2, considered to be a material witness, did not witness the alleged incident but was still treated as a key prosecution witness. Also, P.W.1/victim gave contradictory statements in her examination-in-chief and cross-examination, which undermines her credibility. However, the Courts failed to appreciate this aspect properly. Therefore, it is submitted that the impugned Judgments and Orders dated 20.12.2012 and 29.09.2012 passed by the learned Courts are liable to be set aside and quashed, as they were passed without considering crucial legal and evidentiary issues.

10. In support of his arguments, he relies on the decision of the Co-ordinate Bench of this Court in **Debajit Deori vs. The State of Assam & Anr.** [Criminal Petition No. 1345/2022, dated 12.03.2024], wherein the decisions of Hon'ble Supreme Court, in **Kantilal Martaji Pandor vs. State of Gujarat** [(2013) 8 SCC 781] and **U. Suvetha vs. State** [(2009) 6 SCC 757], were relied on, wherein it has held that proceedings under Section 498A IPC are not justified where there is no marriage between the parties.

11. In **Kantilal Martaji Pandor** (supra), the Co-ordinate Bench specifically relied on paragraphs 13, 14, and 15 of the said judgment, which read as under:

"13. It will be clear from the language of [Section 498A](#), IPC, that if a husband subjects his wife to cruelty, he shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The Explanation under [Section 498A](#) defines "cruelty" for the purpose of [Section 498A](#) to mean any of the acts mentioned in clause (a) or clause (b). In this case, clause (b) is not attracted as there was no harassment by the husband with a view to coercing her to meet any unlawful demand for any property or valuable security or on account of failure by her to meet such demand.

14. The first limb of clause (a) of the Explanation of [Section 498A](#), IPC, states that "cruelty" means any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide. In the present case, although the trial court found the appellant guilty of conduct which had driven the deceased to commit suicide and hence liable for the offence of abetment of suicide under [Section 306](#), IPC, the High Court has given a clear finding in paragraph 13 of the impugned judgment that the conviction of the appellant under [Section 306](#), IPC, cannot be sustained in the eye of law and the appellant deserves to be acquitted of the charge of abetment of suicide under [Section 306](#), IPC. This part of the finding has not been

challenged by the State in appeal before this Court and has, therefore, become final. Thus, the appellant cannot be held guilty of any willful conduct which was of such a nature as is likely to drive the deceased to commit suicide.

15. The second limb of clause (a) of the Explanation of [Section 498A](#), IPC, states that cruelty means any wilful conduct which is of such a nature as to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. In the present case, the High Court has recorded findings against the appellant to hold him guilty of the offence under [Section 498A](#), IPC, presumably for "cruelty" which falls within the second limb of clause (a) of the Explanation under [Section 498A](#), IPC. The relevant Page No.# 6/10 findings of the High Court in paragraph 15 of the impugned judgment are extracted hereunder:

"As discussed earlier, permitting to enter his first wife in the house of deceased Amariben with new born child, is an act of the appellant - accused, which can be said to be a cruel act. The document Exhibit 10 indicates that she was financially exploited and the demand of money were made by the appellant - accused frequently. She has stated that on account of this, she was falling in starving. It is not in evidence that this Court can notice on one fact based on biological reasons assigned that the pregnant lady or lady, who has given birth to child, need more food, as such women are feeling more hungry then other normal women. She was facing very much financial problem and there should be possibility to go into depression and the present appellant - accused was the responsible person for creating this situation. The deceased was dropped woman, but self-respect is privilege of each individuals. The accused depended on the income of deceased Amariben after performing second marriage with her and was under legal as well as moral obligation to see that she may be treated well and may not be felt to insult or ignore. It is settled position that the cruelty includes mental cruelty, physical marks falls over the body are not required to be

proved by the prosecution. The date of the application received by the police is 26.3.1992 and the evidence of PW-1 also show that on 26.3.1992 the appellant-accused had come to the school to inquire whether the deceased Amariben had made an application to the Principal of school or not. He must have been frightened that the deceased may complain genuinely to the school authority and Government and he may lose the job or at least, may invite some departmental action, so anxiety of the appellant- accused is found, which is exposed in the deposition of PW-1. When the deceased Amariben felt in creating apprehension in the mind that she may be killed by Page No.# 7/10 her husband is sufficient to conclude that the wife must have been treated with cruelty either mentally or physically or both types of cruelty and that too frequently made otherwise the defence ought to have prove that she was a patient of depression. No such suggestive evidence made to the school teacher or other witness including mother. Meaning thereby, there is sufficient evidence to show that the deceased was treated with cruelty and that had led her to frustration and thereafter, depression, this is not an act of commission of a lady with child. She had decided to jump into the well leaving the child and accused behind, therefore, the act of the suicide appears to be intentional act to get rid of the frequent insult, ignorance and exploitation. The learned Trial Judge has rightly linked the accused with the offence punishable under [Section 498A](#). There is no error in evaluating the evidence so far as cruelty is concerned."

12. In the case of **U. Suvetha** (supra), the Co-ordinate Bench relied on paragraphs 7, 8, and 9 of the said judgment, which read as under:

"7. Ingredients of 498A of the [Indian Penal Code](#) are :-

(a) The woman must be married;

(b) She must be subjected to cruelty or harassment; and

(c) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband.

8. The appellant herein had not been charged for abetment of a crime. Any conspiracy amongst the accused persons has also not been alleged. A woman in Page No.# 8/10 terms of the aforementioned provision must be subjected to cruelty by her husband and/or his relative. The word 'cruelty' has also been defined in the explanation appended thereto. It is in two parts. Clause (a) of the said explanation refers to a conduct which is likely to drive the woman to commit suicide or to cause grave injury or danger to her life, limb or health (whether mental or physical); clause (b) provides for 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. It is not the case of the first informant that the appellant had any role to play with regard to demand of dowry.

9. The word 'cruelty' having been defined in terms of the aforesaid explanation, no other meaning can be attributed thereto. Living with another woman may be an act of cruelty on the part of the husband for the purpose of judicial separation or dissolution of marriage but the same, in our opinion, would not attract the wrath of [Section 498A](#) of the Indian Penal Code. An offence in terms of the said provision is committed by the persons specified therein. They have to be the 'husband' or his 'relative'. Either the husband of the woman or his relative must be subjected to her to cruelty within the aforementioned provision. If the Page No.# 9/10 appellant had not been instigating the husband of the first informant to torture her, as has been noticed by the High Court, the husband would be committing some offence punishable under the other provisions of the [Indian Penal Code](#) and appellant may be held guilty for abetment of commission of such an offence but not an offence under [Section 498A](#) of the Indian Penal Code."

13. On the other hand, Mr. Baruah, learned Additional Public Prosecutor, submitted that there may not be a formal or socially solemnized marriage between the accused/petitioner and the victim, they were residing together as husband and wife. He submitted that, according to the evidence of P.W.2 (the complainant's mother), the police arrested the accused/petitioner red-handed while he was attempting to set fire to their house. Additionally, P.Ws. 3 and 4 deposed that they had seen the petitioner and the victim living together as husband and wife. However, he acknowledged that there is no evidence of any social marriage or performance of marriage rituals. Still, it is not disputed that they cohabited as husband and wife. Accordingly, he submitted that the learned Trial Court and the learned Appellate Court rightly convicted the accused/petitioner under Section 498A IPC based on the factual circumstances.

14. After hearing the submissions made by the learned counsels for both sides, I have perused the case record and the evidence recorded by the learned Addl. CJM. The petitioner's primary contention is that to constitute an offence under Section 498A of IPC, there must be a valid marriage, and the woman must be legally and socially recognized as the wife of the accused. The petitioner also relied on Section 5(iii) of the Hindu Marriage Act, 1955, which stipulates that the bridegroom must have completed the age of 21 years and the bride 18 years at the time of marriage.

15. In the present case, it is admitted that the victim was only 14 years old at the time of the alleged marriage, and the accused/petitioner was 20 years old, both below the minimum legal age for marriage. Furthermore, the petitioner states that there was no social marriage between the parties, as is evident from the depositions of the prosecution witnesses. Therefore, the petitioner submits that the offence under Section 498A IPC is not made out, as there was no

legally valid marriage.

16. On other hand, the State respondent contends that, although no formal or socially recognized marriage occurred, the parties were residing together as husband and wife, during which time the victim was subjected to mental and physical cruelty by the accused/petitioner. From the evidence on record, it is clear that the victim was only 14 years old at the time of the alleged marriage and had not attained the legal age for marriage. Similarly, the accused/petitioner, being 20 years old, was also underage as per Section 5(iii) of the Hindu Marriage Act. Additionally, it is undisputed from the record and the submissions of both parties that there was no solemnization of marriage between them, nor was their relationship recognized as a marriage by society, despite their cohabitation.

17. As per the law laid down by the Hon'ble Supreme Court, to attract Section 498A IPC, the woman must be legally married to the accused and must be subjected to cruelty or harassment by the husband or his relatives. In the present case, it is an admitted fact that no marriage either social or legal was solemnized between the petitioner and the victim. Moreover, there is no sufficient evidence on record to prove cruelty as defined under Section 498A IPC. While P.Ws. 3 and 4 stated that they saw the accused/petitioner and the victim living together as husband and wife, during cross-examination, they clearly admitted that there was no social marriage between the parties. Therefore, it stands established that there was no valid marriage that could confer upon the victim the status of a "wife" as required to invoke Section 498A IPC.

18. Upon examining the Judgment and Order dated 20.12.2012 passed by the learned Appellate Court, it appears that while the issue of applicability of Section

498A IPC was discussed, the Court did not arrive at a clear finding regarding the existence of a valid marriage or whether the essential ingredients of Section 498A were fulfilled. Instead, the Appellate Court proceeded to affirm the conviction based solely on the fact that the accused/petitioner and the victim were seen cohabiting and that she was allegedly subjected to cruelty in connection with a demand for dowry. However, the vital issue raised by the defence regarding the legal status of the relationship and the applicability of Section 498A IPC was not addressed or discussed in detail by the learned Appellate Court.

19. In view of the above, this Court finds it a fit case to interfere with the Judgment and Order dated 20.12.2012, passed by the learned Sessions Judge, Dhemaji, in Criminal Appeal No. 36(4)/2012, which affirmed and modified the Judgment and Order dated 29.09.2012, passed by the learned Additional Chief Judicial Magistrate, Dhemaji, in G.R. Case No. 541/2012 (SLP). Accordingly, the said Judgments and Orders are set aside and quashed.

20. Resultantly, the criminal revision petition stands allowed and disposed of.

21. With above observation, this revision petition stands disposed of.

JUDGE

Comparing Assistant