

**IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE (S), GOLAGHAT**

**PRC 121 of 2019**

**Section 498-A/494 of Indian Penal Code**

**STATE OF ASSAM**

**V**

**PINKU BORA @ BUL.....ACCUSED**

**PRESENT: - SUNDEEP KASHYAP DAS, LL.M, A.J.S**

**SUB-DIVISIONAL JUDICIAL MAGISTRATE (S), GOLAGHAT**

**FOR THE PROSECUTION:**

**M. SAIKIA**

**.....ASSISTANT PUBLIC PROSECUTOR FOR THE STATE**

**FOR THE DEFENCE**

**N. BORA, M. GOGOI**

**.....ADVOCATE FOR THE ACCUSED**

**EVIDENCE RECORDED ON: -30.04.2019, 19.06.2019, 03.08.2019**

**ARGUMENT HEARD ON: -30.03.2021**

**JUDGMENT DELIVERED ON: -05.04.2021**

## **JUDGMENT**

### **BRIEF FACTS OF PROSECUTION'S CASE**

1. On 31.05.2018, the informant, Smti *Munti Bora* has lodged an F.I.R stating inter alia that on the said date about 01:00 a.m., her husband, i.e. the accused had brought one married woman to her matrimonial house during subsistence of her marriage. Further, he used to torture her mentally and physically and used to make unlawful demand from her. Hence, the informant filed this instant case for taking necessary action.

### **INVESTIGATION**

2. On receipt of *ejahar*, the police registered a case *Merapani* P.S 131/2018. After completion of investigation, the police submitted a charge-sheet for the offence under section 498-A/494 of Indian Penal Code (hereinafter referred to as 'IPC') against the accused person namely Sri *Pinku Bora @ Bul*.

### **APPEARANCE OF THE ACCUSED PERSON**

3. The accused was called upon to enter trial and upon his appearance, copies of relevant documents u/s 173 Cr.P.C were furnished to him in compliance with section 207 Cr.P.C.

### **FRAMING OF CHARGE**

4. Considering the relevant documents and hearing both parties, charge u/s 498-A/494 of IPC was framed and the same was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

### **WITNESSES EXAMINED AND DOCUMENTS EXHIBITED**

5. The prosecution has examined 6 (six) witnesses and exhibited 3 (three) no of documents.

## STATEMENT DEFENCE OF THE ACCUSED u/s 313 Cr.P.C

6. The accused has been examined u/s 313 of Cr.P.C. All the incriminating materials found are put to him. His plea is of total denial. Defence adduced no evidence.

## POINTS FOR DETERMINATION

- a. *Whether, the accused, being the husband of the informant **Munti Bora** subjected her to cruelty to wit a wilful conduct which was of such a nature as is likely to drive her to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of her; or harassed her with a view to coercing her or any person related to her meet any unlawful demand for any property or valuable security on account of failure by her or by any person related to her to meet such demand and thereby committed an offence punishable u/s 498-A of IPC?*
- b. *Whether, on 31<sup>st</sup> day of May, 2018, the accused, in existence of his valid marriage with Smti **Munti Bora**, married another woman namely Smti **Bhano Bora** during the lifetime of Smti **Munti Bora** and thereby committed an offence u/s 494 of IPC?*

## DISCUSSION, DECISIONS AND REASONS THEREOF

### DATE OF MARRIAGE

7. P.W.1, Smti **Munti Bora** has deposed that the accused is her husband and she added that she had eloped and married her husband in the year 2007. P.W.3, Smti **Saraswati Bora** has stated that the informant eloped with her son and married about 8 years ago. P.W.5, Smti **Junti Bora** has corroborated the same. On perusal of evidence of witnesses, it appears that the informant eloped with the accused and married each other. On the one hand, P.W.1 (informant) stated that she eloped and married in the year

2007 and on the other hand, P.W.3 and P.W.5 stated that she married about 8 years ago from the date of evidence, i.e. in the year 2011. Further, the informant did not state in Ext-1 about the date of her marriage. As such, from the above it appears that there is no corroboration between the witnesses regarding the year of marriage.

#### **CRUELTY BY HUSBAND-AS ALLEGED BY INFORMANT cum VICTIM**

8. P.W.1 has alleged that her husband used to torture her at night and always chase her to drive her out of her matrimonial house. He never let her to sleep and would push her from bed. He used to force her to bring dowry from her parents. He had threatened to kill her by administering poison in her meal and threatened to shoot her brothers. He did not maintain her when she used to remain ill. He used to press her neck at night. However, none of the prosecution witnesses have corroborated the same. Further, she admitted that neither she stated the said incriminating facts in her F.I.R nor in her statement u/s 161 Cr.P.C before police. Interestingly, she admitted that she stated these facts for the first time before court. Learned Defense Counsel argued that there are many discrepancies in the statement of the informant recorded u/s 161 Cr.P.C and her evidence before court. In statements u/s 161 Cr PC, there may be certain omissions which are either normal or material. In case of material omission it can be treated as contradiction. Normal discrepancies are those which are due to normal errors of observation , normal loss of memory due to lapse of time due to mental disposition such as shock and horror at the time of occurrence and those may always there however honest and truthful a witness may be . These discrepancies do not corrode the credibility of a witness. Material discrepancies are those which are not normal and not expected of a normal person. These discrepancies do corrode the credibility of a party's case. In the instant case, the informant cum victim had omitted many incriminating facts which ought to have been stated by her before the police and it was expected from her not to miss those relevant facts.

As such, in my opinion, it amounted to contradiction as she omitted material facts.

### **BIGAMY, IF ANY**

#### **STANDARD OF PROOF OF 2<sup>ND</sup> MARRIAGE FOR ATTRACTING OFFENCE OF BIGAMY**

9. The offence depends upon the proof of the second marriage during the subsistence of the first marriage. The second marriage must be a legally valid marriage so as to come within the mischief of Section 494. The prosecution is under an obligation to satisfactorily establish by evidence that the second marriage has been solemnised in accordance with law or custom applicable to the parties. In the absence of the evidence of the performance of marital ceremonies necessary in a marriage were admission of the second marriage by the accused will not satisfy the ingredients of the offence under Section 494, I.P.C.
10. In order that an offence under Section 494 may be constituted it is necessary, at least, that all the ceremonies which are necessary to be performed in order that a valid marriage may take place, ought to be performed and ordinarily, all these ceremonies would amount to valid marriage but for the fact that the marriage becomes void on account of the existence of a previous wife.
11. In a prosecution under Section 494, 'marriage' must be strictly proved. Any admission, tacit or otherwise, of marriage would not be sufficient. It is necessary for the complainant to give strict proof of marriage.
12. In a country like India where registration of marriage is not common, it is absolutely necessary to prove the facts and circumstances relating to the alleged ceremony of marriage to enable the Court to determine whether legal marriage did take place.

13. Where one of the essential requirements of marriage has not been performed, the marriage is void and the marriage being void the accused cannot be convicted for bigamy. Similarly when there is no substantive proof of marriage, provisions of this section cannot be attracted.

14. In the case of ***Gopal Lal Vs State of Rajasthan, AIR 1979 SC 713***, the Apex Court has made it clear that in order to attract the provisions of Section 494 IPC, both the marriages of the accused must be valid in the sense that the necessary ceremonies, required by the personal law governing the parties, had been duly performed in both the marriages."

15. In para 9 of the aforesaid decision, it was further observed thus:

*"Unless, therefore, the requirements of a valid marriage are established in both the marriages of the person, who is sought to be prosecuted, the offence u/s 494 IPC, cannot be said to have been completed.*

16. In the case of *Kanwal Ram v. Himachal Pradesh Administration*, their Lordships of the Supreme Court reiterating the principles laid down in Bhauroo's case (*G. Bhauroo v. State of Maharashtra* (supra)) held that in a prosecution for bigamy, the second marriage had not only to be proved as a fact, but it must also be proved that the necessary ceremonies had been performed. It has also been held that in Law, the admission made by the accused regarding the second marriage is not evidence of fact of the second marriage having taken place. In bigamy case, the second marriage, as a fact, that is to say, the ceremonies constituting it must be proved. The admission of marriage by the accused is not evidence of it for the purpose of proving the marriage in adultery or a bigamy case.

17. From the above, it is clear that the standard of proof for prosecution is very high and it must prove the 2<sup>nd</sup> marriage of the accused. Now, let me analyse how far the prosecution has been able to prove the 2<sup>nd</sup> marriage of the accused person.

18. P.W.1 has stated that her husband, i.e. the accused brought another woman to her matrimonial house on May 31, 2018 at about 01:00 a.m. namely Smti *Bhano Bora*. Ext-1 reveals the same. However, during cross-examination, P.W.1 has admitted that the accused did not have social marriage with his 2<sup>nd</sup> wife. Further, there was no court marriage between them. P.W.2, Smti *Bhano Bora* has stated that the accused is her husband and that on May 27, 2018, she had eloped with the accused. Sri *Ghana Bora* was her first husband. During cross-examination, she admitted that no social marriage took place between her and the accused. P.W.4, Sri *Krishna Chutia* has deposed that the accused had married for the 2<sup>nd</sup> time but he does not know the name of his 2<sup>nd</sup> wife. During cross-examination, he admitted that he did not witness if the accused had either social marriage or court marriage with his 2<sup>nd</sup> wife. P.W.5 has deposed that the accused had married with his 2<sup>nd</sup> wife for about 1 year and he resides with her. During cross-examination, P.W.5 admitted that the accused did not have social marriage with his 2<sup>nd</sup> wife, Smti *Bhano Bora*. Therefore, in the absence of concrete evidence to prove the 2<sup>nd</sup> marriage, evidence adduce prosecution witnesses are not sufficient to attract Section 494 of IPC.

19. Situated thus, from the above, it appears that prosecution has failed to prove the guilt of the accused beyond reasonable doubt to prove the ingredients u/s 498-A and 494 of IPC to warrant conviction against him.

### **DECISION**

***The above points are decided in negative and goes in favour of the accused person***

## ORDER

In view of the discussions made above and the decisions reached in the foregoing points for determination, it is held that the prosecution has failed to prove beyond reasonable doubt that the accused person Sri ***Pinku Bora @ Bul*** has committed the offence under section **498-A/494** of IPC as alleged and as such he is acquitted of the charge under section **498-A/494** of IPC and he be set at liberty forthwith.

His bail bond shall remain in force for another six months from today.

This judgment is given under my hand and seal of this court on this 05<sup>th</sup> day of April, 2021

The case is disposed of on contest.

SUNDEEP KASHYAP DAS

SUB-DIVISIONAL JUDICIAL MAGISTRATE (S)

GOLAGHAT

## **APPENDIX**

### **LIST OF PROSECUTION WITNESS**

P.W.1-Smti *Munti Bora*

P.W.2-Smti *Bhano Bora*

P.W.3-Smti *Saraswati Bora*

P.W.4-Sri *Krishna Chutia*

P.W.5-Smti *Junti Bora*

P.W.6-Sri *Durlav Medhi*

### **LIST OF DEFENCE WITNESS**

DW- NONE

### **LIST OF PROSECUTION EXHIBITS/DOCUMENTS**

Ext-1-*F.I.R*

Ext-2-*Sketch Map*

Ext-3-*Charge-sheet*

### **LIST OF DEFENCE EXHIBITS/DOCUMENTS**

NONE

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