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**(2011) 03 GAU CK 0054**

**Gauhati High Court**

**Case No:** Criminal Revision No. 240 of 2004

Tajadoley and Others

APPELLANT

Vs

State of Assam

RESPONDENT

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**Date of Decision:** March 3, 2011

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 397, 401
- Penal Code, 1860 (IPC) - Section 34, 498A

**Citation:** (2011) 2 DMC 622 : (2011) 2 GLT 232

**Hon'ble Judges:** C.R. Sharma, J

**Bench:** Single Bench

**Advocate:** B. Kalita, S. Dutta, P. Khataniar and D. Talukdar, for the Appellant; K. Munir, Addl. P.P., for the Respondent

**Final Decision:** Allowed

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**Judgement**

C.R. Sarma, J.

Heard Mr. B. Kalita, learned Counsel appearing for the Petitioners. Also heard Mr. B. B. Gogoi, learned Addl. Public Prosecutor, Assam.

2. By this petition, filed u/s 401 r/w Section 397 Code of Criminal Procedure, the judgment and order, dated 19.02.2004 passed by the learned Sessions Judge, Dhemaji, in Criminal Appeal No. 29(4)/2003, thereby dismissing the appeal preferred by the present Petitioners against the judgment and order of conviction passed by the learned SDJM, Jonai in G.R. Case No. 151/2002, has been challenged. By the judgment and order dated 17.11.2003 the learned SDJM, Jonai convicted the Petitioners for the offence under Sections 498(A)/34 IPC and sentenced them to suffer rigorous imprisonment for one year each. Aggrieved by the said judgment of conviction and sentence the Petitioners, as Appellants, preferred Criminal Appeal No. 29(4)/2003 and the learned Sessions Judge, Dhemaji, by the impugned judgment and order, while upholding the impugned conviction modified the sentence of

rigorous imprisonment as rigorous imprisonment for 6 months. Aggrieved by the said judgment and order, the Petitioners have come up with this revision on the ground that the learned Courts below committed error by recording the conviction, as indicated above without any sufficient evidence on record.

3. Mr. B. Kalita, learned Counsel appearing for the Petitioners, taking this Court through the evidence on record and the provision of Section 498(A) IPC, has submitted that there is no allegations regarding demand of property or valuable security and as such the provision of Section 498(A)(b) is not applicable in this case. The learned Counsel, appearing for the Petitioners further submitted that there is also no sufficient evidence to show that the conduct of the Petitioners towards the complainant was of such a nature which was likely to drive the woman to commit suicide or to cause grave injury or danger to the life of the woman. The learned Counsel further submitted that there is no medical evidence to substantiate that the woman had sustained any grave injury endangering her life, limb or health. In view of the above, it is submitted that the Courts below committed error by holding the Petitioners guilty of the offence under Sections 498(A) IPC.

4. Supporting the impugned judgment and order, the learned Addl. P.P. has submitted that the victim woman has clearly stated that she was tortured by her mother-in-law, that her parents-in-law had kept her husband away from her and that this conduct on the part of the parents-in-law of the victim woman was sufficient to constitute cruelty.

5. Having heard the learned Counsel for both the parties, in order to appreciate the arguments, advanced by the learned Counsel and to examine the correctness of the impugned judgment and order I feel it to be proper to briefly scan the evidence on record.

6. The victim woman deposing as PW-1 stated that she had love affairs with her husband since prior to their marriage and consequently she became pregnant. According to PW-1 a village meeting (Kebang) was held and as per decision of the said Kebang she was taken as his wife by Taja Doley and thereafter she used to live in the marital house. She stated that during her stay in her marital house her mother-in-law used to beat her and that she was not given food to eat. She stated that her husband did not raise any objection against such treatment meted out to her. She also stated that her parents-in-law sent her husband away from the home and that she was abused by her parents-in-law in foul language. The PW-1 stated that she had given birth to a girl child and her mother-in-law had driven her out of her marital home. She also stated that her mother-in-law had even asked her to kill the baby. According to PW-1, the ill treatment and assault meted out her by her in-laws, compelled to take shelter in the parents house.

7. Sri Latimbar Pegu, who deposed as PW-2 did not say anything about the torture. What he stated was regarding the holding of village meeting i.e. "Kebang". In his

cross-examination PW 2 stated that he came to know from the victim woman that she was tortured.

8. Smti. Laimi Kutum who deposed as PW-3 stated that the PW-1 was married by Taja Doley as per Mishing Custom. This witness also did not say anything about the alleged torture etc.

9. PW-4, Sri Lalit Doley, who deposed as PW-4, stated that once he was informed by the PW-1 that she was tortured in her marital home. He was also informed by the PW-1 that her husband was sent away from home by her parents-in-law. This witness further stated that after the delivery of the baby by the PW-1, a village meeting i.e. "Kebang" was held and in the said Kebang, as per the earlier decision the Petitioner was asked either to pay Rs. 50,000/- as compensation to the PW-1 or to take her back but the Petitioners refused to comply with the said direction or the "Kebang". According to PW-4 the Kebang granted 12 days time to both the parties to think over the matter and during the intervening period PW-1 was asked to stay in her parents house. From the evidence of this witness, it appears that he had no personal knowledge about the torture and ill-treatment committed on the PW 1. His evidence regarding torture is nothing more than what was reported to him by PW 1. Sri Dimbeswar Doley, who deposed as PW 5 stated that the complainant had alleged that she was tortured by the Petitioners. According to this witness he had heard that the mother-in-law of the PW1 had assaulted and ill-treated her.

10. From the above discussed evidence, it appears that none of the PWs i.e. PW Nos. 2, 3, 4 and 5 had any personal knowledge about the torture committed to PW 1 i.e. the victim woman. The victim woman i.e. the PW 1, nowhere stated the nature of torture and/or ill-treatment meted out to her. There is no evidence on record to show that the victim had sustained any injury at the hands of the Petitioners. That apart the evidence given by the PW1 does not indicate that the conduct of her husband as well as her parents-in-law were such that she had no other alternative but to commit suicide.

In order to hold a person guilty of the offence under Sections 498(A) the prosecution is required to prove that the woman was subjected to cruelty by her husband or relative of her husband. The explanation to Section 498-A IPC which reads as follows, indicates cruelty for the purpose of Section 498-A IPC.

498-A(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 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.

11. As discussed above, there is no allegation regarding any demand of property or valuable security. Therefore, the explanation (b) of 498-A is not applicable in this case. The allegation of the complainant i.e. the victim woman is that she was tortured, assaulted and ill-treated by the Petitioners. The explanation (a) provides that the conduct i.e. the torture, ill-treatment etc. should be of such nature, which is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman. Admittedly in the present case the victim woman did not disclose the nature or gravity of assault or torture committed on her. There is no evidence to show that there was any grave injury or danger to life, limb or health of the woman. The learned Sessions Judge, in his impugned judgment has observed that the word "cruelty" means any kind of torture or misbehaviour which effects a woman both physically and mentally. The learned Sessions Judge further observed "soon after the marriage the accused Tankeswar Doley and Untira Doley forced their son Taja Doley to leave their house. Thus accused Taja Doley deserted his wife soon after his marriage and it is one form of cruelty to the victim. When a woman is deprived of personal and physical contract from her husband, this is one kind of cruelty." The said observation made by the learned Sessions Judge regarding cruelty is not in conformity with the explanation given in Section 498-A(a)(b) IPC. To constitute the offence u/s 498-A IPC the conduct must be 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 of the woman. Desertion by the husband cannot be sufficient grounds for an woman to commit suicide and the said desertion does not amount to causing danger to life, limb or health of the woman. Admittedly there is no evidence of grave injury. Therefore, in my considered opinion, the learned Sessions Judge committed error by holding that the desertion of the woman by her husband amounted to cruelty, as provided by Section 498-A IPC.

12. In the light of the above discussion and considering entire aspect of the matter, I have no hesitation in holding that the prosecution failed to prove beyond all reasonable doubt that the Petitioners committed the offence u/s 498-A IPC. Therefore, I find sufficient merit in this revision requiring interference. Accordingly the impugned judgment and order of conviction are set aside and quashed.

13. The revision petition is allowed. The Petitioners are acquitted and set at liberty forthwith. Their bail bonds stand discharged. Return the LCR immediately.