

C.R CASE NO: 3246 OF 2008
COMPLAINANT: SMTI NIKI KUMAR Vs
ACCUSED: SHRI BHUPEN KUMAR

DISTRICT: TINSUKIA
IN THE COURT OF THE SUB DIVISIONAL JUDICIAL MAGISTRATE
(S) II, KAMRUP

CR CASE NO: 3246/2008
498A/ 406 IPC

COMPLAINANT: SMTI NIKI KUMAR
VERSUS
ACCUSED: SHRI BHUPEN KUMAR

PRESENT : YUSUF AZAZ, SDJM(S) II, KAMRUP

ADVOCATE FOR THE COMPLAINANT: SHRI R.N DEV SARMA

ADVOCATE FOR THE ACCUSED: SHRI T. SHARMA

CHARGE FRAMED ON: 3/7/2009

EVIDENCE RECORDED ON: 8/4/2009, 17/6/2009, 2/1/2010, 16/3/2010,
6/8/2010, 13/10/2010,8/4/2011, 26/3/2012

ARGUMENT HEARD ON: 21/7/2012

JUDGMENT DELIVERED ON: 13/8/2012

TYPED BY ME

YUSUF AZAZ, SDJM(S)II, KAMRUP.

C.R CASE NO: 3246 OF 2008
COMPLAINANT: SMTI NIKI KUMAR Vs
ACCUSED: SHRI BHUPEN KUMAR

JUDGMENT

1. The prosecution in this case was launched by the lodging of this complaint by the victim, Smti Niki Kumar with the Hon'ble Chief Judicial Magistrate, Kamrup on 11/6/2008 to the effect that the victim, Smti Niki Kumar is the wife of the accused, Shri Bhupen Kumar and that since after their marriage the accused has subjected her to cruelty by torturing her both mentally and physically assaulting. The complainant/ victim has further alleged that the accused and his family members used to taunt her for not bringing expensive "Streedhan" with her. The complainant has further alleged that the accused had misappropriated her "Streedhan" properties like bed, sofa set, steel almirah, gold necklace, gold ring, gold bangle, muga cloth etc upon which he had dominion.
2. It would be pertinent to mention herein that upon receipt of the complaint this court took cognizance and had examined the complainant under section 200 CrPC. The evidence of the complainant and her witnesses were recorded before the framing of the charge and thereafter the formal charge under section 498A/ 406 IPC were framed against the accused and the same was read over and explained to the accused to which he had pleaded not guilty and claimed to be tried.
3. It would be further pertinent to mention herein that upon the complaint this court had issued the search warrant and some of the above "Streedhan" properties were recovered from the house of the accused.
4. The complainant in support of its case examined as many as nine witnesses and tendered two documents in evidence; whereas the defence declined to adduce evidence.
5. The defence case is of denial as is evident from the statement of the accused recorded under section 313 CrPC. The defence had contended that the accused never physically or mentally tortured the complainant and that the complainant left the company of the accused on her own. The accused had further contended that the

TYPED BY ME

YUSUF AZAZ, SDJM(S)II, KAMRUP.

C.R CASE NO: 3246 OF 2008
COMPLAINANT: SMTI NIKI KUMAR Vs
ACCUSED: SHRI BHUPEN KUMAR

complainant had love affair with one Shri Nipen Kumar as such she left the company of the accused to live with that person.

6. I had heard the arguments put forwarded by both the parties. The complainant had submitted that the case as against the accused is proved beyond reasonable doubt; hence the accused ought to be convicted; whereas the defence had contended that no ingredient of “cruelty” as defined under section 498A IPC is present in the facts and circumstances of this case; hence the accused is liable to be acquitted. The learned counsel for the accused had further contended that the alleged victim had love affair with one Nripen Kumar as such she left the company of the accused on her own and had instituted this complaint to obtain divorce by pressurizing the accused.
7. Upon hearing and on perusal of record I have framed the following point for determination-

(1) Whether the accused being the husband of Smti Niki Kumar has treated her with cruelty as defined under section 498A IPC, by mentally and physically torturing her and thereby committed offence under section 498A IPC?

(2) Whether the accused was entrusted with or had the dominion over the Streedhan of the complainant? If yes, whether the accused had dishonestly misappropriated the same for his own use?

DISCUSSION, DECISION AND REASONS FOR THE DECISION:

8. Now let us discuss the materials on record and try to arrive at a definite finding as regards the point for determination.

POINT FOR DETERMINATION NO.1:

9. The prosecution has examined as many as nine witnesses. Of these witnesses the alleged victim, Smti Niki Kumar is the principal witness to the alleged occurrences. Let me discuss the evidence of

TYPED BY ME

YUSUF AZAZ, SDJM(S)II, KAMRUP.

C.R CASE NO: 3246 OF 2008
COMPLAINANT: SMTI NIKI KUMAR Vs
ACCUSED: SHRI BHUPEN KUMAR

the alleged victim and try to find out whether she had supported her case.

10. Before embarking on the discussion let me state that the marriage of the accused with the alleged victim is not disputed by any of the parties and it is also not in dispute that the alleged incidents took place during the subsistence of their marriage.

11. The PW1, Smti Niki Kumar (victim) had deposed that she was married to the accused in the year 2007 and alongwith her she brought bed, godrej almirah, gold necklace, four gold bangles, two gold finger rings, muga cloth sets.

12. The PW1 has deposed that the accused and his family members taunted her that she had brought all the inexpensive things with her. According to the PW1, Smti Niki Kumar, the accused had also taunted her for bringing inexpensive gifts and other things with her and told her that if he would have married some other girl, then he would have got many expensive gifts.

13. The PW1 has stated that the accused and his family members namely, Smti Minu Kumar (sister of accused), Smti Joymati Kumar (sister in law of accused), Smti Aikan Kumar (sister in law of accused) told her to bring money and more things from her parental house and if she (complainant) could not bring the same then she is not worthy of living. She (PW1) has also stated that the accused drove her away from his house on 29/5/2008 because she could not bring money and other articles from her parental house, even after the accused asked her to do so. The complainant had stated that when she was driven out it was late at night and she had nowhere to go as such she took shelter in the verandah of the house of the accused, because the accused had closed his door. She (PW1) thereafter went to the house of one Shri Amrit Kumar, who is the relative of the accused and a Ayurvedic doctor in the morning and remained there for about three hours and then her mother came to the house of Shri Amrit Kumar and took the complainant back to her parental house.

14. The PW1 further stated that she thereafter went to her parental house and when the accused did not come to take her back, her mother alongwith some other persons of the locality accompanied the

TYPED BY ME

YUSUF AZAZ, SDJM(S)II, KAMRUP.

C.R CASE NO: 3246 OF 2008
COMPLAINANT: SMTI NIKI KUMAR Vs
ACCUSED: SHRI BHUPEN KUMAR

complainant to the house of the accused to ask the accused to keep the complainant in his company, but the accused and his family members again misbehaved with her mother and the other persons and did not take her back in their house (house of the accused). The PW1 has stated that the accused and his family members even tried to physically assault her and the other persons; as such they came back and lodged this complaint.

15. The PW1 was cross examined but nothing material could be elicited from her cross examination. The perusal of the cross examination of the PW1 show that she was merely suggested to by the defence that no such incident took place as stated by her to which she denied. Other than the denial of the PW1 to the suggestion made by the defence, the cross examination of the PW1 contains no material to discredit her.
16. The perusal of the evidence of the PW1 show that the accused had taunted the complainant because of her inability to bring expensive gifts or other things with her and that too on many occasions and it was continuous and not some isolated incidents. It also appears from the defence taken by the accused that she was suspected by the accused to have some illicit affairs with one Nripen Kumar. It is also seen from the evidence of the PW1 that she had to stay for one long night outside her house. It is also revealed from the evidence of the PW1 that the accused and his family members verbally abused the mother of the complainant and the other persons of her locality when they went to the house of the complainant on 1/6/2008.
17. The perusal of the evidence of the PW1 reveals that she had stated in details regarding one incident dated 25/5/2008. She had stated that on that day the accused physically assaulted her. She had further stated that Smti Minu Kumar had also chased her with the intention of assaulting her. She (PW1) has further stated that Smti Joymati Kumar had slapped her twice and told her to bring goods from her parents' house.
18. She further stated that on 29/5/2008 the quarrel took place sometime during the daytime at about 2:00-3:00 PM and it continued till evening and at about 7:00- 8:00 PM the accused drove her out of the

TYPED BY ME

YUSUF AZAZ, SDJM(S)II, KAMRUP.

C.R CASE NO: 3246 OF 2008
COMPLAINANT: SMTI NIKI KUMAR Vs
ACCUSED: SHRI BHUPEN KUMAR

house and as it was dark she stayed the entire night at the verandah of the accused, because the accused had closed the door of the house.

19. The above statements regarding the details of the said incident is made by the complainant in her cross examination, and further the said statements fully provides the details about the incident which had been briefly stated in her examination in chief.

20. The learned counsel for the accused had contended that the complainant had not stated about the above facts in her complaint petition or in her examination in chief; hence the said statements cannot be relied upon, because the same is a material omission. The said contention of the defence is not sustainable because there is no inconsistency in the statement of the complainant as made in her complaint petition or in her examination in chief, nor can these statements be said to be improvements, but the above statements merely provides the details and the manner in which the entire incident took place which resulted in the complainant reaching her mother's house.

21. It is well settled that a complaint petition or for that matter ejahar (in cases instituted on police report) need not be an encyclopedia of all the events, but the complaint petition and ejahar is the material which sets the criminal law in motion and hence it is required to contain in brief the facts constituting the offence.

22. Even otherwise, the perusal of the complaint petition reveals that the real intention of the complainant in filing the complaint petition was to recover her "Streedhan" which is allegedly misappropriated by the accused, as such she had casually stated about the earlier incident and only when her evidence before charge was recorded, did this court upon finding sufficient material against the accused under section 498A IPC had framed this charge. The mere reading of the complaint petition would show that the complainant did not intend to file the complaint under section 498A IPC, because the complaint petition only quotes the sections 406/ 506 IPC and no other, and this explains the absence of the details about the other incidents.

23. In view of the above it is held that nothing much could be read into while appreciating the evidence of the complainant regarding the absence of the details about the above stated incidents in her

TYPED BY ME

YUSUF AZAZ, SDJM(S)II, KAMRUP.

C.R CASE NO: 3246 OF 2008
COMPLAINANT: SMTI NIKI KUMAR Vs
ACCUSED: SHRI BHUPEN KUMAR

complaint petition or in her examination in chief, because the omission of the same is sufficiently explained from the other materials on record. The absence of the details of the incidents cannot be considered as contradiction or improvement in view of the above discussion

24. Now let me discuss the evidence of the other prosecution witnesses and try to find out whether they have corroborated the complainant in material particulars or not. The PW2, Smti Nilima Nath is the mother of the PW1 and she had deposed that her daughter (complainant) told her that the accused and his family members taunted her regarding the cheapness of the “Streedhan” brought by her and also demanded colour tv, Rs.20,000/- in cash, Dunlop set etc. The PW2 has further stated in her cross examination that only after two days from marriage, the accused told her that they had given cheap things in marriage.

25. The defence had merely suggested to the PW2 that no such incident took place to which she denied. The perusal of the examination in chief and the cross examination of the PW2 reveal that she had merely reiterated everything in her cross examination. The cross examination of the PW2 is nothing but a mirror image of her examination in chief. The defence had merely asked questions mainly on the statements which she had already stated in her examination in chief and she reiterated the same; as such there is no material contradiction or differences in her statements or with the statements of the PW1 or other witnesses.

26. The PW2, Smti Nilima Nath further stated that the accused started to torture the complainant soon after the marriage and one day in the morning the accused informed her over telephone that Dr. Amrit Kumar had called her to his house. The PW2 stated that she went to the house of Dr. Amrit Kumar soon after she received the telephone from the accused and there she found the complainant and then she brought the complainant along with her as they refused to take her back. She (PW2) had further stated that she again went with some persons of her locality namely, Smti Munni Sharma (PW3), Smti Pinky Barman (PW4), Smti Sewali Basumatary (PW5), Shri Kishen Poddar (PW6), Shri Master Tito Francis (PW7) to accompany the

TYPED BY ME

YUSUF AZAZ, SDJM(S)II, KAMRUP.

C.R CASE NO: 3246 OF 2008
COMPLAINANT: SMTI NIKI KUMAR Vs
ACCUSED: SHRI BHUPEN KUMAR

complainant to the house of the accused for asking the accused to take back the complainant in his company.

27. The learned counsel for the defence contended that the PW2 had stated that she received telephone from the accused and then she came to know that Dr. Amrit Kumar had called her and when she went there she found the complainant, but during cross examination the PW2 could not state her own telephone number or as to who pays the bills etc.; hence her said statements cannot be believed. The said contention of the defence is not sustainable, because the evidence of the PW2 is consistent with that of the PW1 and the other witnesses and merely because a witness does not know his phone number, the same would not mean that she did not had telephone or that she is lying. The perusal of the evidence of the PW2 shows that she is illiterate in all probability because she had put her thumb impression on her depositions. The same would also explain that she is not that technologically savvy; hence it is not unnatural that she does not know or remember her mobile phone number.

28. Moreover the fact as to whether the PW2 received the telephone call from the accused or not is not at all material, because it is established that she went to the house of Dr. Amrit Kumar and the complainant was at his house. The accused had admitted in his statement recorded under section 313 CrPC that he did not physically assault the complainant, but the complainant on her own left his house and went to the house of Dr. Amrit Kumar and thereafter went to mother's house. The accused had not denied the fact that the complainant left his house and went to the house of Dr. Amrit Kumar on the date of the alleged occurrence, i.e on 29/5/2008.

29. The learned counsel for the defence had further contended that the PW2 admittedly came to the house of the accused for the first time about a week or so after marriage as such the statement of the PW2 that the accused told her that the articles brought by the complainant is a lie. The said contention of the accused is also not sustainable in the absence of any other material to the effect that the accused and the PW2 never met till two days after marriage. It might be a fact that the PW2 went to the house of the accused after about a week or so, but the accused did come to the house of the PW2 and this has come into the evidence of the PW2 wherein she had stated that the

TYPED BY ME

YUSUF AZAZ, SDJM(S)II, KAMRUP.

C.R CASE NO: 3246 OF 2008
COMPLAINANT: SMTI NIKI KUMAR Vs
ACCUSED: SHRI BHUPEN KUMAR

marriage was solemnized on 24th day and the complainant came back on 27th day and then again went to the house of the accused on the next day. It is also the custom that after two or three days of marriage, the husband comes to the house of his wife alongwith his wife. In view of the above the accused could very well have stated that to the PW2 that the articles given by her is cheap and not of good quality.

30. The perusal of the evidence of the PW2 shows that she has materially corroborated the evidence of the PW1 (complainant) in material particulars and their evidence is consistent to each other.
31. The PW3, Smti Munni Sharma is the neighbor of the complainant and she has deposed that she was present during the marriage of the accused with the complainant and had seen the articles given with marriage. She has further stated that the accused drove the complainant out of his house and thereafter she (PW3) alongwith some other persons went to the house of the accused accompanied by the complainant and her mother, but the family members of the accused and the accused himself ill-treated them and also damaged the VIP and some other things. She has further deposed that the accused did not take back the complainant alongwith him as such they returned.
32. The PW4, Smti Pinky Barman, Smti Sewali Basumatary (PW5), Shri Kishan Poddar (PW6) and Shri Tito Francis (PW7) have fully corroborated the version of the PW1, PW2 and the PW3 and have also corroborated each other. All the above witnesses went alongwith the complainant and her mother to the house of the accused. All the above witnesses have consistently stated that the accused and his family members misbehaved with them and even tried to assault them, but they escaped from there.
33. The defence had cross examined all of these witnesses but there is nothing on record to doubt or disbelieve them. In fact the evidence of all these witnesses is so much consistent with each other that there is no room to disbelieve them. Further these witnesses are the natural witnesses and there is likelihood that these witnesses accompanied the complainant and her mother to the house of the accused, because

TYPED BY ME

YUSUF AZAZ, SDJM(S)II, KAMRUP.

C.R CASE NO: 3246 OF 2008
COMPLAINANT: SMTI NIKI KUMAR Vs
ACCUSED: SHRI BHUPEN KUMAR

they are the neighbors and hence expected to take part in such type of errands.

34. In view of the above discussion it is seen that some of the facts are well established by the complainant side beyond all reasonable doubt and those facts are that the accused and the complainant are married and that soon after the marriage the accused and his family members taunted her for not bringing good and expensive gifts, “stridhan” articles etc. It is also established that the taunting and the verbal abuses were not one off incidents. It is also established that the complainant was driven away by the accused and she had to spend her night outside the house of the accused and in the morning went to the house of Dr. Amrit Kumar and from there she went to her mother’s house. It is also established that she returned back to the house of the accused on 1/6/2008, but the accused and his family members verbally abused them and chased them away.

35. Now let me discuss whether the facts established above constitute “cruelty” within the meaning of section 498A IPC. The section 498A IPC defines cruelty to mean any willful conduct which is likely to drive the woman to commit suicide or to cause grave injury to the woman, whether mental or physical and further provides that any harassment meted out to the woman to meet unlawful demands of properties or valuables or upon failure to meet the said demands also falls within the said definition.

36. The facts established by the complainant shows that the accused and his family members taunted the complainant soon after her marriage that she brought cheap and inferior quality goods. These taunting did not end there, but continued. Further the accused told the complainant, who was a newly wedded wife at that time that if he had married someone else, then he would have got expensive and superior quality goods.

37. In my opinion the above statements made to a newly wedded wife, who had left her own parental home in search of a new life with her husband, would surely be damaging enough to cause her grave mental injury, if not physical. The above taunting coupled with the fact that there was a regular demand from the accused to bring things from her mother is surely harassment meted out to the complainant

TYPED BY ME

YUSUF AZAZ, SDJM(S)II, KAMRUP.

C.R CASE NO: 3246 OF 2008
COMPLAINANT: SMTI NIKI KUMAR Vs
ACCUSED: SHRI BHUPEN KUMAR

to meet the illegal demands of the accused and to compel the mother of the complainant to meet the said demands. Further the fact that the accused drove the complainant out of his house because she could not meet his demands is a mean to harass her and to compel her to oblige, or to denounce her forever for failing to meet the illegal demands.

38. Shri Thaneswar Sharma, the learned counsel for the accused had stated that the complainant had an illicit relationship with one Shri Nripen Kumar; as such she left the company of the accused on her own and has instituted this false complaint. The learned counsel for the defence has further contended that the PW3, Smti Munni Sharma had also stated in her cross examination that some quarrel took place between the parties due to the regular visits of Nripen Kumar to the house of the accused; hence the said statement made by the PW3 establishes the fact that the complainant was in illicit relationship with Nripen Kumar. The said contention of the defence is not sustainable because the PW3 has nowhere stated that Nripen Kumar and the complainant had any illicit relationship. The PW3 had merely stated that she heard about some dispute from her neighbors. It is seen from the above statement that the PW3 is not the direct privy to the said fact, but she had merely heard it from the neighbors there some quarrel took place. The PW3 had not stated the reason for the said quarrel. In addition to the above the above statement is nothing but hearsay; hence not admissible, because the PW3 is not the author of the said statement, but she heard it from neighbors. In addition to the above the PW3 had denied all the suggestions which was given by the accused to the effect that the complainant had illicit relationship with Nripen Kumar. The PW3 had stated in her cross examination that she is not aware if the complainant had any illicit relationship with Nripen Kumar. In view of the above it is held that the evidence of the PW3 does not prove that the complainant had an illicit relationship with Nripen Kumar.

39. Further the complainant was the best person to be questioned about the alleged relationship, but strangely enough the defence did not ask her even a single question as regard the alleged relationship with Nripen Kumar. The second best person to depose regarding the nature of relationship, if any, shared between the complainant and Shri Nripen Kumar was Nripen Kumar himself, but the defence had

TYPED BY ME

C.R CASE NO: 3246 OF 2008
COMPLAINANT: SMTI NIKI KUMAR Vs
ACCUSED: SHRI BHUPEN KUMAR

not examined him. There is no direct evidence on record to show, even remotely, that there was any illicit relationship between the complainant and Shri Nripen Kumar; as such it is held that the defence has failed to show that the complainant was in any illicit relationship with Shri Nripen Kumar.

40. Even if for the sake of arguments it is held, though not proved, that the PW1 had love affairs with the said Shri Nripen Kumar, then also the same do not give any right to the accused to assault the PW1 or to drive her out of his house at night and even after knowing that she is taking shelter in the verandah, not to call her back. The above act of the accused is inhuman and cannot be justified by any means. It is neither expected nor acceptable that any person would drive out a young woman at night and leave her to remain out for the entire night, without any regard for her safety.

41. The defence has further contended that the PW1 left the house of the accused on her own and she did not want to stay with the accused as she was in illicit relationship with Nripen Kumar; as such the accused cannot be faulted. The said contention of the defence is not sustainable because a person cannot be expected to live with the person who had assaulted her and driven her out at night without a roof over her head. A woman is not cattle and you could not expect a woman to come back to his tormentor, just like animals who are battered and beaten by their owners, but are expected; and do return to their owner at the end of the day.

42. The conduct of the accused in refusing to take back the complainant to his house and that too when respectable persons of the locality came is indication of the fact that the accused does not have any regard for relationships and does not have any regards for elders. The above incident also clearly establishes the aggressive behavior of the accused and it can be inferred that when the accused could become so aggressive in public and could verbally abuse so many respectable person of the locality in public view, then how cruel he would have behaved inside closed doors with the complainant, whom he does not like which is evident from the fact that he drove her out at night and did not even bother to think twice about her safety.

TYPED BY ME

YUSUF AZAZ, SDJM(S)II, KAMRUP.

C.R CASE NO: 3246 OF 2008
COMPLAINANT: SMTI NIKI KUMAR Vs
ACCUSED: SHRI BHUPEN KUMAR

43. In view of the discussions made above it is held that the prosecution has proved beyond reasonable doubt that the accused habitually and continuously used to mentally and physically assault the complainant as the complainant did not meet his illegal demands nor her family members could meet his demands.
44. The habitual verbal and physical abuses by the accused upon the PW1 and the fact that he drove her out of his house at night are definitely acts which would cause injury to her person and cause danger to her life and health, both physical and mental. These assaults coupled with the fact that after the assaults the PW1 was driven out of the house at night to spend the night in open is sufficient enough to cause mental derailment of a person. A wife cannot lead a healthy and normal life in such an environment created by her husband, where she is treated like a cattle and battered, beaten, and driven out at the whim of the husband and still expected to perform her marital obligations to perfection.
45. In view of the above discussions it is held that the accused subjected the PW1 with cruelty as defined in section 498A IPC and as such it is held that the accused has committed the offence under section 498A IPC.
46. DECISION: The accused subjected the PW1 with cruelty as defined in section 498A IPC and as such it is held that the accused has committed the offence under section 498A IPC; hence the point for determination is answered in the affirmative, in favour of the prosecution.
47. POINT FOR DETERMINATION NO.2: Whether the accused was entrusted with or had the dominion over the Streedhan of the complainant? If yes, whether the accused had dishonestly misappropriated the same for his own use?
48. The prosecution has alleged that the accused was entrusted with and had the dominion over the “streedhan” properties of the complainant, but when the complainant asked him to return it back, the accused refused and chased the complainant away.
49. The PW1 has deposed about the above incident and has stated that the accused refused to give her “Streedhan” properties when she

TYPED BY ME

YUSUF AZAZ, SDJM(S)II, KAMRUP.

C.R CASE NO: 3246 OF 2008
COMPLAINANT: SMTI NIKI KUMAR Vs
ACCUSED: SHRI BHUPEN KUMAR

asked for them. The complainant had thereafter lodged this complaint, for the recovery of the said articles alleging misappropriation.

50. The complainant was admittedly the wife of the accused and she used to reside with the accused; as such all the articles of “streedhan” would naturally be in the house of the accused. The complainant was driven out of the house of the accused on 29/5/2008. The complainant has not stated in her evidence that she had asked the accused to allow her to take back the “Streedhan” properties on that day itself. i.e on 29/5/2008.
51. The complainant had stated that she was chased away on 29/5/2008 and that she spend the night outside the house of the accused and on the next day, i.e on 30/5/2008 her mother came to the house of Dr. Amrit Kumar and took her to her (mother’s) house. The complainant has further stated that she came back alongwith her mother and some other persons on 1/6/2008, but on that day also the accused and his family members verbally abused them and even tried to assault them for the reason of which they escaped from there.
52. The perusal of the above evidence of the complainant clearly reveals that she had not asked the accused to allow her to take back the “streedhan” properties on 29/5/2008, 30/5/2008 and also on 1/6/2008. The complainant had stated in her complaint petition that the accused refused to give back her properties on 1/6/2008, but remained silent about the same in her evidence recorded before the court. The other prosecution witnesses namely, the PW2 to PW8 also did not state that they went to the house of the accused and asked to take back the properties of the complainant and also did not state that the accused refused on allow them to take back the same on 1/6/2008. It is seen from the above materials on record that there is no evidence to the effect that the accused ever refused to allow the complainant to take back her “Streedhan” properties.
53. The complainant has not stated about any other dates in her complaint petition when she went to the house of the accused and the accused would have refused to give the properties to the complainant. The complaint petition discloses about only one incident, i.e on 1/6/2008 when the complainant allegedly went to the

TYPED BY ME

YUSUF AZAZ, SDJM(S)II, KAMRUP.

C.R CASE NO: 3246 OF 2008
COMPLAINANT: SMTI NIKI KUMAR Vs
ACCUSED: SHRI BHUPEN KUMAR

house of the accused to bring back her properties, but the accused refused, but in the evidence recorded before the court none of the witnesses have specifically stated that the complainant or anybody else had asked the accused to allow them to take the properties, but the accused refused. The perusal of the evidence on record reveals that the complainant and her witnesses have failed to prove that the accused had refused to allow them to take back the properties on 1/6/2008.

54. The PW1 (complainant) has stated in her cross examination that she did not ask the accused to return back her properties on or before 29/5/2008 or 30/5/2008. The complainant had stated that she again went to take back her properties on 12/6/2008.

55. The complaint in this case was filed on 11/6/2008 and as such it does not mention about any incident of 12/6/2008 and the complainant had also not stated in details as to what had happened on 12/6/2008. The complainant had merely stated that she again went to bring the articles on 12/6/2008, but did not state as to what happened on that day.

56. In view of the above it is seen that there is no material on record to prove that the accused had refused to hand over the "Streedhan" properties to the complainant and further there is no material on record to show that the accused had misappropriated the said properties.

57. The learned counsel for the complainant has contended that some of the articles were recovered from the house of the accused and as such the same proves that the accused misappropriated the same. The said contention of the complainant cannot be believed because the complainant admittedly used to stay with the accused till 29/5/2008 as such all her articles would surely be found in the house of the accused and moreover the complainant admittedly was chased away from the house on 29/5/2008 as such the articles would naturally be in the house of the accused; hence the finding of the said articles in the house of the accused does not prove that he had misappropriated the same, albeit the same shows that the accused had no intention of misappropriating the same, because, if he would have had any

TYPED BY ME

YUSUF AZAZ, SDJM(S)II, KAMRUP.

C.R CASE NO: 3246 OF 2008
COMPLAINANT: SMTI NIKI KUMAR Vs
ACCUSED: SHRI BHUPEN KUMAR

intention of misappropriating then he would have surely disposed of all those properties by then.

58. The complainant was chased away from the house of the accused on 29/5/2008 and the search warrant was executed on 10/8/2008, that is after a lapse of more than three months; as such if the accused really had the intention of misappropriating the said properties, then he would surely had disposed of the said properties in this long period of three months.

59. Considering the above circumstance it is held that the accused had no intention of misappropriating the “Streedhan” of the complainant.

60. The learned counsel for the complainant had further stated that the complainant did not recover some golden articles; hence it has to be presumed that the accused had misappropriated the same. The said contention of the complainant is not sustainable because there is no direct evidence on record to show that the complainant had ever entrusted the said golden articles to the accused and there is also no direct and clear evidence to the effect that the complainant had placed the same in the dominion of the accused.

61. In addition to the above the complainant has not produced any list of articles allegedly given during marriage as “streedhan”. The Dowry Prohibition (Maintenance of presents to the bride and bridegroom) Rules, 1985 further provides that the parties should maintain a list of presents given to the bride and the groom and is required to be signed by both the parties, but in the instant case no such list was prepared at the time of marriage; as such not much reliance could be placed on the oral evidence of the complainant that her golden articles are missing.

62. In view of the above discussion it is held that the complainant has failed to prove that the accused had misappropriated for his own use her “Streedhan” properties.

63. DECISION: The complainant has failed to prove that the accused had misappropriated for his own use her “Streedhan” properties; as such the point for determination is answered in the negative, in favour of the accused.

TYPED BY ME

YUSUF AZAZ, SDJM(S)II, KAMRUP.

C.R CASE NO: 3246 OF 2008
COMPLAINANT: SMTI NIKI KUMAR Vs
ACCUSED: SHRI BHUPEN KUMAR

64. In view of the discussions made above and the decisions reached therein it is held that the accused had subjected the PW1, his wife, with cruelty as defined in section 498A IPC; as such he is convicted of the offence under section 498A IPC.

65. Considering the nature of the offence and the manner in which the accused has treated the PW1 in total disregard to the institution of marriage by driving his wife out of his house at night without sparing a thought as to how a woman would stay out at night, in total disregard of the security of the PW1 it is held that the accused would not be extended the provisions of the Probation of Offenders Act, 1958. The manner in which the offence is committed compels me not to release the accused on probation.

66. I have heard the accused on the point of sentence. The accused has submitted that he may be dealt with lightly considering the fact that he is the sole bread earner of his family.

67. Considering the nature and the manner of the commission of the offence and the fact that the accused do not seem to be repentant of his deeds and actions I deem it fit and proper to sentence the accused to simple imprisonment for two years and to pay fine of Rs.5000/- and in default to undergo simple imprisonment for another two months.

ORDER

68. In view of the discussions made above and the decisions reached in the foregoing points for determination the accused is convicted under section 498A IPC, but he is acquitted of the charge under section 406 IPC. The accused is convicted under section 498A IPC and sentenced to undergo simple imprisonment for two years; and to pay fine of Rs.5000/- (five thousand) and in default of payment of fine to undergo simple imprisonment for another two months. If the fine is realized then an amount of Rs.3000/- (three thousand) would be paid to the victim, Smti Niki Kumar as compensation.

69. Furnish a free copy of the judgment to the accused.

70. The case is disposed of on contest without cost.

TYPED BY ME

YUSUF AZAZ, SDJM(S)II, KAMRUP.

C.R CASE NO: 3246 OF 2008
COMPLAINANT: SMTI NIKI KUMAR Vs
ACCUSED: SHRI BHUPEN KUMAR

Given under my hand and the seal of this court on this the 13th day of
August, 2012 at Guwahati.

YUSUF AZAZ,
SDJM(S) II, KAMRUP.

APPENDIX

PROSECUTION EXHIBITS:

1) EXHIBIT 1- PRESCRIPTION

TYPED BY ME

YUSUF AZAZ, SDJM(S)II, KAMRUP.

C.R CASE NO: 3246 OF 2008
COMPLAINANT: SMTI NIKI KUMAR Vs
ACCUSED: SHRI BHUPEN KUMAR

- 2) EXHIBIT 2: RECEIPT
- 3) EXHIBIT 3: SEIZURE LIST
- 4) EXHIBIT 4: ZIMMA NAMA

DEFENCE EXHIBITS

NONE

PROSECUTION WITNESSES

- 1) SMTI NIKI KUMAR
- 2) SMTI NILIMA NATH
- 3) SMTI MUNNI SHARMA
- 4) SMTI PINKI BARMAN
- 5) SMTI SEWALI BASUMATARY
- 6) SHRI KISHORE PODDAR
- 7) MASTER TITU FRANCIS
- 8) SHRI CHANAKYA NATH
- 9) SHRI DHIRENDRA KALITA

DEFENCE WITNESSES

NONE

YUSUF AZAZ,
SDJM(S)II, KAMRUP

TYPED BY ME

YUSUF AZAZ, SDJM(S)II, KAMRUP.