

(1999) 11 CAL CK 0002

In the Calcutta High Court

Case No : Civil Appellant Jurisdiction F.A. No. 363 of 1997

Smt. Anita alias Sona Goswami

APPELLANT

Vs

Sourendra Kanta Goswami

RESPONDENT

Date of Decision : 19-11-1999

Acts Referred:

Hindu Marriage Act, 1955 — Section 13(1)(a)

Citation : (2000) 1 CALLT 241 : (2000) 2 DMC 126

Hon'ble Judges : Bhaskar Bhattacharya, J; Amit Talukdar, J

Bench : Division Bench

Advocate : Mr. B.B. Sarkar and Miss Iti Dutta, for the Appellant; Mr. Sudhis Dasgupta, Mr. S. Mukherjee and Mr. P. Sinha, for the Respondent

Judgement

A. Talukdar, J.—Assailing the Judgment and decree passed by Shri T. K. Ghosh, the learned Additional District Judge. 14th Court. Allpore. 24-Parganas (South) in Matrimonial Suit No.45 of 1993 passed on April 5, 1997 the wife/Appellant has filed this First Appeal.

2. The learned Judge by his impugned Judgment and order of decree, on the basis of the suit for divorce filed by the husband/Respondent u/s 13(1)(1a) of the Hindu Marriage Act, 1956 granted a decree for divorce against the wife/Appellant and declared that the marriage between the wife/Appellant and the husband/Respondent stood dissolved and she was entitled to receive a permanent alimony at the rate of Rs. 800/- per month from the date of the passing of Judgment and decree and refused to pass any other litigation cost as" It was prayed for.

3. The factual matrix of Matrimonial Suit No. 45 of 1993, the judgment of which culminated in this present Appeal is to the effect that the husband/ Respondent (P-W.3) was an M.B.B.S. doctor and was working under Dr. B.N. Chakroborty as a Research Assistant In the field of reproductive Biology.

4. During 1983 to 1994 he attended the Maryland Nursing Home with Dr.

Chakroborty where he met the wife/appellant who was the O.T. nurse in the said Nursing Home. Towards 1987 he (husband/Respondent) took a flat on rental basis at Picnic Garden Road where the wife/Appellant used to visit him. At the outset the husband/Respondent allowed such visit as it was a friendly visit but as rumours spread that he was in love with the wife/Appellant, he objected to such visits. The wife/Appellant requested him to marry her as she was in love with him but her proposal was turned down by the husband/Respondent.

5. On February 14, 1990, she came to his flat and informed that she was being tortured by her mother and brother for her visit to the flat of the husband/Respondent and unless the husband/Respondent marries her she will commit suicide. As her request was refused, she suddenly took out some liquid poison and poured it in her mouth stating that she is committing suicide. The husband/Respondent immediately took her to the Calcutta National Medical College and Hospital where it was detected that the wife/Appellant had taken Organic Phosphorus substance and she had to be treated in the said Hospital for some time and subsequently was discharged. After her discharge from the Hospital fresh request was made for marriage.

6. On March 9, 1990, the Husband/Respondent was compelled to marry the wife/Appellant at the Kalighat Temple. After the said marriage they were residing as husband and wife. It was the case of the Husband/Respondent that he discovered that the aim of the wife/Appellant was to "squeeze money". She prevented him from sending money to his parents (P.W.1 and P.W.2). The wife/Appellant was "totally indifferent to the comfort" of the Husband/Respondent. It was further alleged that after a gruelling 16 to 18 hours of work in the laboratory he was not served breakfast and after his return he did not get his supper and that the wife/appellant was "rude, quarrelsome nature and suspicious minded" and that whenever the Husband/Respondent returned home late from work he was accused of illicit relationship with the nurses of the Institution. She was unwilling to perform her marital obligation and was always a disgruntled partner.

7. During 1990 when P.W.s 1 and 2 came to Calcutta for medical check up, the wife/Appellant quarried with them and they had to stay in the sister's house of the Husband/Respondent at Bangur Avenue. On June 28, 1992, she demanded Rs.10,000/- for purpose of repairing her parental home as the Husband/Respondent did not have money he was threatened that unless money is paid, she will commit suicide and she also abused him. As a result, he had no option but to leave his flat and stayed away from the wife/Appellant.

8. The wife/Appellant denied the entire case of the Husband/Respondent by filing a written statement on 23-2-94.

9. During the trial the Husband/Respondent examined his parents in Commission as P.W.s 1 and 2. He examined himself as P.W.3 and his brother-in-law (sister's husband), Pradip Kumar Sharma Sarkar as P.W.4. The evidence of P.W.s 1 and 2 taken on Commission were largely hearsay in nature. They deposed with regard

to the various allegations of cruelty and indifferent behaviour and demand of money made by the wife/Appellant as it was beared by them from P.W.3.

10. P.W.3 the Husband/Respondent corroborated his version In the plaint and P.W.4, the brother-in-law of P.W.3 (sister's husband) deposed that he was asked to sign as a witness to the marriage between the Husband/Respondent and the wife/Appellant. He also deposed about the incident in his house during 1990 in the presence of P.W.s 1 and 2 when the wife/Appellant abused P.W.s 1 and 2.

11. The wife/Appellant examined herself as O.P.W. No.1. Her younger brother, Tapas Dey as O.P.W. No.2 and Birendra Nath Sarkar, the husband of her younger sister as O.P.W. No.3. She also examined Jaba Roy who was a nurse of the Maryland Nursing Home P.W. No. 4 Gansh Sarkar, the father of O.P.W. No.3 was examined as O.P.W. No.5 and her uncle Adhir Das was examined as O.P.W. No.6. That Is all the evidence that has been adduced In favour of the wife/Appellant.

12. Shri B.B. Sarkar, learned counsel appearing on behalf of the wife/ Appellant along with Smt. Iti Dutta has canvassed several points for our consideration. Shri Sarkar has submitted that the judgment and decree passed by the learned trial Judge was not supported by the evidence and other materials on record. He has further submitted that the learned trial Judge failed to consider the correct Import of the evidence on record and arrived at a perverse finding. It was also contended by Shri Sarkar that the finding of the learned trial Judge that "In view of forgoing discussion, we have come to the irresistible conclusion that the Husband/Petitioner proved with "cruelty" was perpetrated on him by the Respondent/wife and the marriage tie between the parties has been broken. The Petitioner/ Husband is therefore, entitled to get a decree for divorce as prayed for "is not compatible with the attending facts and circumstance of the entire case and the supportive evidence.

13. Shri Sarkar has also taken us through the entire gamut of the evidence and the periphery of the Judgment to show that the various grounds like consumption of poison refusal to serve breakfast, demand for money could not compose a valid ground for "cruelty". With much emphasis at his command. Shri Sarkar has forcefully showed that the various aspects taken into account by the learned trial Judge to arrive at his finding with regard to dissolution of marriage between the parties on account of "cruelty" were not sufficient grounds. Accordingly Shri Sarkar has prayed that the judgment and decree for divorce granted by the learned trial Judge should be forthwith set aside.

14. Appearing on behalf of the Husband/Respondent Shri Sudish Dasgupta, learned Senior Advocate along with his associate counsel Shri Subhra Kamal Mukherjee has refuted the contentions of Shri Sarkar. It has been submitted on behalf of the Husband/Respondent that the Impugned judgment and decree for divorce Is not liable to be interfered with since It is the result of a considered and well-reasoned exercise of the learned trial Judge who after taking Into account the entire scenario has arrived at his conclusion with regard to "cruelty" and

passed the Judgment and decree for divorce.

15. Shri Dasgupta, learned Senior Advocate as part of submission has also relied on the following decision of the Supreme Court :

Dr. N.G. Dastane Vs. Mrs. S. Dastane, .

16. He has also referred to Savitri Balchandani Vs. Mulchand Balchandani, In the case of Smt. Savitri Balchandant v. Mulichand Balchandant, In support of his argument that the circumstances as adumbrated by the Respondent were sufficient circumstances to warrant the conclusion of "cruelty".

17. In order to better appreciate the contesting claim of the parties and for profitable discussion section 13(1)(1a) is set out :

13 Divorce--(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

(ia) has, after the solemnization of the marriage treated the Petitioner with cruelty.

18. Cruelty, no doubt, constitutes a strong ground for dissolution of marriage as cruelty is a very antithesis of love and affection. Cruelty need not always be explicitly spelt out, as a cruel conduct implies harsh behaviour of certain intensity and persistence and that cruelty should be of such nature as it has been observed by the Law Commission "which amounts to cutting the sacred link that the parties had when entering upon the marriage, sought to create between themselves".

19. Cruelty, in our view, as described in section 13(1)(1a) cannot fall under any straight Jacket formula. Each case has to be judged on its own merit so as to enable the court to determine on the facts and circumstances of the individual case as to whether there was actual cruelty or not.

20. Keeping this aspect in mind let us proceed to salvage from the purported marital ruins of the parties the circumstances of cruelty that has been highlighted mainly through the evidence of P.W.3--the Husband/ Respondent as we have found earlier that the evidence taken on Commission of the parents of P.W.3--P.W.s 1 and 2 are hearsay in nature. We exclude the same from our consideration. That apart notwithstanding the said evidence being hearsay in nature. P.W.s 1 and 2 had spoken about incidents during the year 1990 when the wife/Appellant came to the house of P.W.4 and started abusing them with filthy language and also on another occasion she behaved in a similar fashion. This evidence of P.W.s 1 and 2 does not appeal to us as valid ground for "cruelty".

21. P.W.4, the son-in-law of P.W.s 1 and 2 also deposed about the wife/ Appellant using abusive language on both occasions to P.W.s 1 and 2 during the year 1990.

22. The evidence of P.W.s 1 and 2 and 4 with regard to the allegation of abuse by the wife/Appellant do not, In our view, constitute a valid ground of cruelty far from bringing it within the ambit of section 13(1)(1a) of the Hindu Marriage Act.

23. Let us now advert to the sheet anchor of the case of the Husband/Respondent on which the entire suit revolves. Culling out the relevant points with regard to cruelty from the evidence of P.W.3, we find that :

(a) The wife/Appellant on February 14, 1990 came to his flat and informed that she was tortured by her mother and brothers for her visit to his flat and if he does not marry her she will commit suicide and on the refusal of the Husband/Respondent she swallowed organic phosphorus substance, as a result of which she was admitted in the National Medical College and Hospital from where she was discharged after some time. The Discharge Certificate was proved as Ext. 1.

(b) P.W.3 further stated that he was forcefully made to marry the wife/ Appellant on March 9, 1990 at Kallghat temple. It was his case that after marriage realization dawned on him that the wife/Appellant had the only desire to "squeeze money" from the Respondent. On account of persistent resistance from the wife/Appellant, the Respondent could not send money to his parents (P.W.s 1 and 2) and also could not provide for medical treatment due to her strong opposition.

(c) She was totally indifferent to the comfort of the Husband/Respondent.

(d) She did not care to prepare breakfast nor did she serve him supper after he returned from his work.

(e) and that the wife/Appellant was "rude, quarrelsome nature and suspicious minded" that she further alleged the Husband Respondent was having an "Illicit relation with a nurse of the Institution.

(f) that the wife/Appellant was reluctant to perform her conjugal obligation and was an unwilling partner and that during the year 1990 when P.W.s 1 and 2 came for medical check-up twice: one before Puja and another during the time of X-mas, they put up in the house of P.W.4. There the Appellant quarrelled with them in presence of other relatives and,

(k) that on June 28. 1992 she demanded Rs. 10,000/- for repairing the house of her mother and brother and in default she would commit suicide.

24. These are the entire circumstances of purported cruelty as have been made out by the Husband/Respondent.

25. The various circumstances spoken of by P.W.3 which according to him amounted to cruelty does not impress us at all."

26. In our considered opinion the circumstances as unfurled hereinabove do not fall within the scope of section 13(1)(1a) to constitute cruelty so as to form the basis of a ground for the dissolution of marriage on that score. As it has

discussed In the forgoing paragraphs that no hard and fast rule can be laid down as to which act of what type of conduct amounts to cruelty in any given case as what in cruelty in one particular case may not amount to cruelty in another case.

27. Various surrounding circumstances have to be taken into account before arriving at the finding of cruelty and whether a particular act or a certain type of conduct constitutes cruelty has to be construed In the back drop of the entire matrimonial relationship. There has to be a persistent and continuous act which is so intense and so persistent and goes on continuously to affect the very basic fibre of the mental faculty and the feeling of either of the spouse and it is such in nature that they cannot form any other reasonable hypothesis that such act or conduct which is both persistent and so intense that it is antithetic to the natural love and affection and destructive of soft feeling of mutual togetherness and concern for one another which is the basic structure of the framework of a normal and happy matrimonial relationship. It is cruelty which Is like a serpent, polluting and poisoning the sacred nectar of life, from which the couple derives pleasure.

28. But the individual and torn out of context and isolated circumstances from a string of incidents which go on to continuously harp on the martini chord, thus straining it, cannot be termed as cruelty. The remote incident here, a stray conduct thereof either of the spouse do not form cruelty. In other words, in order to constitute cruelty in a matrimonial relationship there has to be something more than some Individual and detached Incident.

29. As we have categorised the various circumstances which have been deposed by P.W.3 and have been relied on by the learned trial Judge and arrive at his conclusion with regard to cruelty which is so dissociated with each other and far flung In nature that we are unable to arrive at the irresistible conclusion that those circumstances if taken together amount to ultimate conclusion with regard to cruelty.

30. The learned trial Judge grossly erred in arriving at his conclusion with regard to that aspect of cruelty perpetuated on the Husband/ Respondent by taking into consideration the evidence of P.W.3 that the wife/ Appellant "had attempted to commit suicide by consuming poison on 14-2-90 before their marriage and as a result of which the Husband/Petitioner was compelled to marry her on a subsequent date (09-3-90)." Any act in our opinion cannot form the subject-matter of decision so as to bring it within the ambit of section 13(1)(1a) of the Hindu Marriage Act, 1955. Since sub-clause (1a) of section 13(1) of the said Act clearly postulates "(1a) has, after the solemnization of the marriage, treated the Petitioner with cruelty." As such the purported threat by the wife/Appellant to commit suicide by consuming poison on 14-2-90 which is the date anther for to the marriage between the parties cannot form whatsoever a valid ground of cruelty. The learned Judge wholly went wrong by taking into consideration the said factor.

31. The allegation that the wife/Appellant "did not care to prepare breakfast" or when the Husband/Respondent returned home after 16 or 18 hours of work "did not get supper" cannot constitute a ground for cruelty. This attitude of the Husband/Respondent is very much mediaeval in nature. More so the same were denied by the wife/Appellant.

32. Apart from the Jurassic approach of the Husband/Respondent who expect that the spouse would be at his beck and call for serving breakfast and supper and infraction of such expectation would tantamount to non-performance of duty of a spouse we find that the said act cannot in any manner whatsoever tantamount to cruelty in whatever form. Not only the allegations could never amount to cruelty but it is the reflection of the feudal male chauvinism of a perverted spouse who wishes to see in his wife a successful cook, a good house keeper and revenue earner but not as a life partner.

33. With regard to the incident of June 28, 1992 when allegedly, the wife/Appellant demanded Rs. 10,000/- for repair of her parental home and further threat to commit suicide also cannot be taken into consideration in view of the fact that the incident which took place on June 28, 1992 cannot be taken as a ground of cruelty.

34. In this context, it is worth while to mention that Exts. D and D1, two letters written by the Husband/Respondent in 1990 from abroad speak of spontaneous feeling and love for the wife/Appellant by the Husband/ Respondent. He has also expressed that he is missing the wife /Appellant very much during his stay in London. All of which manifests that there was absolute normal relationship prevalent at the material time and necessarily it can be concluded that the previous acts of cruelty stood compounded.

35. We have also read the evidence adduced by the wife/Appellant and her witnesses. We find that she has denied the entire allegations and in her cross-examination she could not be shaken.

36. It is also worth while to note that the P.W.3 in his evidence has stated that "besides my brother-in-law no other person went there on my behalf. Pradip Kumar Sharma Sarkar (P.W.4) is my brother-in-law. I did not fill up my form by myself and I only signed on that form." However, a plain reading of Ext C, the Marriage Registration Certificate reveals that one Ashim Shankar Choudhury acted as one of the guardians along with O.P.W. No.6. It would be seen from Ext.D, the letter written by the Husband/Respondent speaks of one "Ashim Kaku" as such it appears that the Husband/ Respondent has not come out with the truth.

37. We, although having no bearing on the genesis of the case, do not hesitate to conclude that the allegation of the Husband/Respondent he was taken forcibly and married does not hold any water.

38. We have also considered the citations placed by Shri Dasgupta. In our view

the ratio of the same does not At in the facts and circumstances of the case.

39. From what has been discussed by us hereinabove we find much substance in the submission of Shri Sarkar and we are unable to accept the contentions raised by Shri Dasputa and we find that the learned trial Judge went wholly wrong at his finding with regard to cruelty. We, therefore, set aside the Judgment and order of decree passed by the learned trial Judge dated April 5, 1997 and accordingly allow the appeal.

40. There will be, however, no order as to costs.

B. Bhattacharya, J.

41. I fully agree with my learned brother that this appeal should be allowed and the Judgment and decree passed by the learned trial Judge should be set aside. However, In view of the perversity of the Judgment delivered by the learned trial Judge, I want to add a few words of my own.

42. After discussing the evidence on record and the decisions referred to by the learned advocate for the plaintiff the learned trial Judge jumped at the conclusion that the wife was guilty of cruelty by making the following findings :--

"In this Instant suit, the petitioner/husband has been able to prove by adducing corroborative cogent evidence on record that the wife/ respondent had attempted to commit suicide by consuming poison on 14/2/ 90 before their marriage and as a result of which the husband/petitioner was compelled to marry her on a subsequent date i.e. on 9/3/90. The Discharge certificate (ext.1) has well corroborated this case of the petitioner husband. The wife/respondent had admitted in her evidence that all the allegations of the petitioner/husband are not totally false. The petitioner/husband is an M.B.B.S. doctor and he Is also doing Ph.D. under the guidance of reputed Dr. Baldyanath Chakraborty and his family background is definitely much higher than in comparison to the respondent's paternal family. D.W.2 has said In his evidence that they are living In a Kutcha room having tile shed over it. He has got his vegetable shop in the market. Thus, I find that the standard and status of both the parties. i.e. the petitioner and the respondent are not similar and the marriage between the parties has been broken. The husband/ petitioner had not neglected his wife/ respondent which has been proved from the letters (Ext. A & D series) and other evidences on record. Both the points are, therefore, answered in favour of the petitioner/husband."

43. Firstly, the learned trial Judge committed a gross error In taking Into consideration the incident of 14.2.90 which occurred prior to the date of marriage in bolding that such conduct of the wife amounted to cruelty, thus authorising the court to pass a decree for divorce. Secondly, the status of the parties or their respective families cannot be the subject matter of this suit and a party is not entitled to get a decree for divorce simply on the ground of disparity in the status of the spouses. Thirdly, even If the marriage between the parts has

broken down irretrievably, the fact alone does not enable a court to pass a decree for divorced unless the spouse applying for divorce has proved any of the grounds mentioned in section 13 of the Hindu Marriage Act. Lastly, the finding of the learned trial Judge that the wife had admitted in her evidence that all allegations of the husband were not false is also based on total non-consideration of the evidence on record. In examination-in-chief, while she was denying the plaint allegations put to her by her counsel, the wife has inadvertently denied the suggestion that the allegation made by the husband against her are totally false. All other statements made In deposition make it abundantly clear that there was no admission of the plaint allegations.

44. Thus, on the basis of the aforesaid findings, no decree for divorce could be passed.

45. I, therefore, agree with my learned brother that the husband has failed to prove that the wife is guilty of cruelty and that the suit should be dismissed.

46. Appeal allowed