

(1997) 12 GAU CK 0012
In the Gauhati High Court
Case No : First Appeal No. 47 of 1997

Sushil Kumar Beri

APPELLANT

Vs

Jyoti Rani Beri

RESPONDENT

Date of Decision : 06-12-1997

Acts Referred:

Family Courts Act, 1984 — Section 19(1)
Hindu Marriage Act, 1955 — Section 13(1)

Citation : (1998) 3 GLT 150

Hon'ble Judges : V.D. Gyani, J;N.S. Singh, J

Bench : Division Bench

Advocate : P. Kataki, for the Appellant; T.N. Srinivasan, for the Respondent

Judgement

V.D. Gyani, J.—This is a an appeal u/s 19(1) of the Family Courts Act, 1984 preferred by the husband against judgment and decree dated 24.2.97 as passed by the Principal Judge, Family Court, Kamrup, Guwahati in Case No. F.C. (Civil) 135 of 1995 thereby dissolving the marriage between the parties and granting a decree of divorce, with permanent alimony of Rs. 2,00,000/- to the wife Petitioner (Respondent herein) on the ground of cruelty.

2. Before proceeding any further, it would be pertinent to note that this appeal as filed was barred by time there was delay of 70 days as filing the same. A Division Bench of this Court by order dated 8.8.97 stayed the operation of the decree conditional upon the Appellant depositing Rs. 60,000/- within a period of one month from the date of the order. The amount so deposited was allowed to be withdrawn by the Respondent wife. Instead of complying with the order the Appellant husband filed an application on 1.9.97 praying for modification of the order dated 8.8.97, seeking deletion of the direction, allowing the wife Respondent to withdraw the amount of Rs. 60,000/- which was not deposited nor has been deposited so far. The ground assigned for modification was that the Respondent wife had her own sources of income, the minors had become major, and the impugned judgment was prima facie not tenable in law. It was this

application registered as 239 of 1997 which was listed before us since almost the whole gamut of arguments both legal factual, was being advanced by the learned Counsel for the Appellant, it was suggested if the parties were agreeable to arguments on merits, to which they expressed their willingness, accordingly, the matter was taken up for hearing on merits although learned Counsel for the Respondent did urge that the Appellant had lost his right of hearing on account of non-compliance of the Courts order dated 8.8.97. During the course of hearing Appellant's counsel submitted that there was no effective attempt at reconciliation between the parties, we therefore directed the parties to remain present in person so that even at this appellate stage, an attempt at reconciliation could be made but the same could not materialise. We, therefore, proceeded with the hearing of the appeal on merits despite the handles of limitation and non-compliance of the court's order dated 8.8.97, because learned Counsel appearing for the Respondent wife conceded to such hearing.

3. This case with slight difference aptly reminds one of a well known scene from Shakespeare's *Writer's Tale*, the arrangement of Hermione who was charged with adultery, a difference life is not a dream over the fire side, it is governed by Rules of realism and not of romance.

4. After almost two decades of married life with a daughter born in November, 1977 and now of marriageable age, and son born in 1980, the Respondent wife had to file a petition for divorce on the ground of cruelty on 30.10.95 claiming custody of the minor son and daughter.

5. The incidents of cruelty as pleaded by the Respondent wife are to be found in paragraphs 6 to 12 of her petition. The Appellant husband in his written statement dated 2.2.96, while denying the allegations as baseless misconceived and motivated, has pleaded "Queen's "tratment" being given to his wife, who according to him was more after his property rather than he, she has been denounced as "Greedy" of cheat mentality and charged with leading an adulterous immoral life.

6. The trial Court on the basis of pleadings framed the following issues:

1. Whether there is cause of action for the suit?
2. Whether the Petitioner is entitled for a decree of divorce?
3. Whether the Petitioner is entitled for permanent alimony?
4. Whether the parties are entitled to get any relief?

Answering the above issues in favour of the wife, the trial Court decreed the suit, hence the appeal.

7. Learned Counsel appearing for the Appellant husband argued that "cruelty" has not been established as such no decree could be passed, secondly the wife was living in adultery she was not entitled to any relief and lastly it was submitted that the Appellant husband is still ready and willing to maintain the

matrimonial bond, and have the Respondent as his wife.

8. Learned Counsel for the Respondent on the other hand submitted that the Appellant's offer to maintain his wife, is shallow and merely intended to ward off the legal liability, which he has incurred, he argued that cruelty has been amply proved, this cruelty has been further aggravated the false and concocted allegations of adultery made by him.

9. We would like to make it clear that since no relief has been sought by the Appellant on the ground of adultery, we would not go into the question. The trial Court should have also controlled and confined the proceedings to the issues legally arising in the case, the Court should not be allowed to be converted into a place for washing the dirty linen of family life, more so when no relief is sought by the party making insinuations of adultery and immoral conduct against the wife. It is not the Appellant's case that provoked or infuriated by any such singular act or adultery on a given moment he rebuked or slapped his wife such is not the defence, then why allow evidence on such an issue, and that too at the cost of an innocent son who is made to deposit against his own mother. It was simply unfortunate and the trial Court ought to have avoided it by adhering to the strict rules of evidence.

10. There is yet Anr. aspect of the matter. Parents of the Respondent wife had set up a highway bridge to see the Appellant settled in life, so as to buy peace and happiness for their daughter. It was a joint venture. The Appellant husband was looking after the business and claims to have invested his own capital. It was yet Anr. bone of contention between the parties. It has its limited relevance so far it has a bearing on the triable issues, but a suit for divorce or any other matrimonial relief cannot be converted into a suit for rendition of accounts or partition, and dissolution of partnership, this is certainly not the scope of suit for dissolution of marriage on the ground of cruelty.

11. Since the decree as passed by the trial Court is based on the ground of cruelty, we shall confine ourselves to this ground as defined u/s 13(1)(i)(a) of the Hindu Marriage Act, 1955 for short, "the Act".

12. Cruelty may be physical as well as mental; undoubtedly, the burden lies on the parties who alleges cruelty. In the instant case the Respondent wife came out with a case of cruelty, in its legal conception cruelty comprises of two distinct elements - (1) Hi-treatment complained of; and (2) the resultant danger or apprehension flowing therefrom. It was argued by the learned Counsel that the Respondent failed to establish cruelty.

13. It would, therefore, necessarily take us the findings recorded by the trial Court and the evidence adduced by the parties. As already noted above, the Respondent-wife's pleaded case is to be found in paragraphs 6 to 12. She has examined her parents as witnesses while the Appellant husband examined his son Rajib and brother Sushil. Apart from oral testimony there is documentary evidence placed on record exhibit-1 Doctor's certificate and the report lodged at

all Womens" Police Station, Exhibit-2. The evidence of P.W. 3 Smti. Premlata reveals a tell story as to how her daughter was treated by the Appellant. The Appellant husband had gone to the extent of alleging that a plot was hatched out to annihilate him with a view to grab his property. The trial Court has found it as a fact that in the midst of allegations and counter allegations the fact remains that the Respondent wife was tortured both mentally and physically by the Appellant husband. While an occasional indulgence in liquor by itself would create cruelty, but the subsequent conduct, under intoxication cannot be altogether ignored, on occasions more than one, the Respondent wife was not only physically beaten up, but publicly dragged on the street. She was mercilessly beaten and even strangulated, the incident dated 23.11.84, thereafter again in December 1991 and in November, 1993 and public premises on 9.11.93 have been amply proved by evidence oral as well as documentary using filthy language, slapping and thrashing and bodily lifting and throwing the Respondent on 9.11.93, the Appellant not only twisted the Respondent's finger, but also took out a kokri and intimidated the Respondent wife that she would be done to death in case she showed any sign of torture or inform any one including the police, she tried to contact her parents over phone, but it was also not allowed. This matter was reported to the police and it is amply established this incident by itself substantiate the enormity of cruelty, and the resultant danger to the Respondent-wife from such behaviour and conduct, the finding recorded by the trial Court being well supported by the evidence available on record, does not call for any interference. As already noted above we are not going into the question of alleged adulterous conduct since it is not an issue involved in this case.

14. Although it is the claim of the Appellant husband that he was financially sound and well off being a Class I Contractor, it is established and evident that he was demanding money from his wife although it cannot be outrightly termed as dowry, nevertheless it was quite extorting. The Appellant was employed as a salesman in a shop belonging to his uncle as testified by P.W. 3, Premlata Das, while the Respondent wife was studying in St. Mary's College, Shillong in 1975, when she either eloped or was kidnapped by the Appellant and recovered from Darjeeling and later married accordingly to Vedic rites. The wife has also deposed to his demands for money. Such demands also amount to cruelty. It was for this reason that the wife's parents extended a helping hand, in establishing a weigh bridge in 1981, where both the Appellant and his father-in-law worked. The business flourished and improved his financial conditions.

15. As for instances of cruelty, the Respondent wife has averred, as time passed the Appellant started misbehaving the Petitioner, her parents day by day and used to hurl abusive and filthy language after returning in the evening in an absolutely drunken state. Appellant's behaviour became so arrogant and intolerable that the parents of the Petitioner finally withdrew from the partnership concern of the business of weigh bridge and then she alone remained as the sole owner of the concerned business. In spite of the arrogant, abusive

and cruel behaviour shown to the Respondent and her children and the family members, she being a devoted Hindu wife and being the mother of two children tolerated with tearful eyes for the sake of her own family life and for the welfare of her two kids.

16. On 23.11.84, after the Appellant returned from Delhi he started quarrelling with the Respondent wife and demanded from her to sign certain documents for transferring all the movable and immovable properties of the Respondent-wife in his name. As she refused to succumb to the pressure of signing the documents showing transfer of her property in his name, he beat her mercilessly and wanted to strangle her to death.

17. The Appellant misappropriated huge amount of money earned through the business of weigh bridge and diverted the entire money for buying immovable properties in Lucknow, Delhi, Mussorie, he became more violent, abusive and cruel to her and due to his constant cruelty, physical and mental, she had to leave her home again in December, 1991 and took shelter in her parents place.

18. That in the last week of November, i.e. on 9.11.93 the Appellant returned from Delhi and reached home at 7 P.M. with a stranger, the Respondent kept his food and drink ready as per his prior information and for his friend. While the guest was sitting in the guest room enjoying television, the Appellant called her into the bed room and started abusing her with all foul and filthy language. The Appellant suddenly attacked her with his hand, slapping, hosing and thrashing bodily lifting and throwing her down. He tried to throttle her with his hand and with doppatta, he then kicked her all over the body, everytime she fell on the floor. He twisted her hand and finger resulting in severe pain and blood flowing out of the fingers, which was witnessed by the boy servant at that time. Not being satisfied with his perversion, the Appellant took out a Khookri from the drawer of the bed and told her that if she tried to show the sign of torture to other people and inform the police, he would kill her.

19. The above facts and circumstances of cruelty which included an attempt on her life is well supported by her own evidence and further corroborated by the reports dated 23.11.89 (Ext.2) the medical certificate of the Doctor who treated the Respondent wife after being assaulted by the Appellant (Ext. 1) and the report lodged at all Women Police Station (Ext. 3). Those contemporaneous documentary evidence amply makes out a case of cruelty. She has in her own cross-examination denied all insinuation and allegations made against her. The finding recorded by the trial Court on the point of cruelty is amply supported by evidence and does not call for any interference. The quality of evidence adduced by the Respondent wife leaves no manner of doubt about cruel treatment to which she was subjected to by the Appellant.

20. The learned Counsel appearing for the Appellant has placed before us a photostat copy of a judgment dated 30.11.96 delivered by a Division Bench of this Court in First Appeal No. 17/89 (Monoranjan Dutta v. Smti. Shibani Dey).

This judgment turns on its own facts and does not help the Appellant in any manner. Each one of the above acts or instances is sufficient in itself to constitute cruelty within the meaning of Section 13(1)(i)(a) of the Act, abusing the wife on road, spitting at her on way, suspecting her fidelity and calling her a prostitute are acts of cruelty apart from physically assaulting her, as established by her evidence. Even extortionist demands for money in whatever gloss of nomenclature, apart from being prohibited under the law, would itself amount to cruelty. We are not called upon to decide a case under the Dowry Prohibition Act. We are primarily concerned with the conduct of the spouses.

21. Cruelty has not been defined under the Act. It is a course of conduct or behaviour, in relation to matrimonial duties and obligation the conduct of one adversely affecting the other spouse. Repeated demands for money not only harassment and humiliation flowing from such demands but physical torture as well is amply made out in the testimony of the wife who staked her future with the Appellant in 1975 ignoring her parents, only to be suspected and even denounced as prostitute. The Appellant husband has painted her in the darkest hues possible, as is evident from her cross examination. The ill-treatment that was meted out to her fully justifies her apprehensions that it would be harmful to her to live with the Appellant. The hostile and humiliating circumstances in which she was forced to live with the Appellant, constant ill-treatment and harassment to which she was subjected to by the Appellant, as established by her evidence, fully justifies the decree as passed by the trial Court.

22. The case relied upon by the learned Counsel for the Appellant turns on its own facts and does not help him in any manner as indeed in such matters, not much depends on precedents as observed by the Supreme Court in Shobha Rani Vs. Madhukar Reddi, Each case may be different from the other. "Cruelty" has been amply established in the case at hand. No ground for interference with the impugned judgment and decree has been made out by the Appellant. The appeal is liable to be dismissed, it is accordingly dismissed with costs of counsel fee of Rs. 5,000/-.