

Tripura High Court

Sri Anil Kumar Tripathy vs Smt. Biva Upadhyay (Tripathy) on 19 May, 2022

HIGH COURT OF TRIPURA

AGARTALA

FA No. 03 of 2017

Sri Anil Kumar Tripathy,  
son of late Murilidhar Tripathy,  
resident of Bhubrighat,  
P.S Patharkandi,  
District-Karimganj, Assam.

---- Appellant(s)

Versus

Smt. Biva Upadhyay (Tripathy),  
wife of Sri Anil Kumar Tripathy,  
daughter of Sri Ashok Upadhyay,  
resident of village Kuchainala,  
P.S. Kamalpur,  
District Dhalai, Tripura.

---- Respondent(s)

For Appellant(s)	:	Ms. Sarama Deb, Adv.
For Respondent(s)	:	Mr. R.G. Chakraborty, Adv.
Date of hearing	:	10th December, 2021.
Date of pronouncement	:	19th May, 2022.
Whether fit for reporting	:	NO

HON'BLE MR. JUSTICE S. TALAPATRA  
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

Judgment & Order

(Per S.G. Chattopadhyay, J.)

This is an appeal from the judgment and order dated 03.02.2017 delivered in Title Suit (Divorce) 02 of 2015 by the Additional District Judge, Kamalpur dissolving the marriage between the appellant and his wife. [2] The wife instituted the suit for dissolution of marriage by a decree of divorce on solitary ground viz., cruelty contemplated under section 13(1)(ia) of the Hindu Marriage Act, 1955. According to the wife (respondent herein), her marriage with the appellant was solemnized on 18.06.2006 as per Hindu rites and customs FA No. 03 of 2017 and thereafter she started conjugal life with the appellant in his residence at Bhubrighat in Karimganj District of Assam. After the marriage, appellant started demanding dowry from her for which a matrimonial discord developed between them. However, in the midst of difference, a daughter was born to them on 11.08.2007. The appellant was still creating pressure on his wife for bringing dowry and sometimes he had tortured her physically even in presence of his parents. Being irritated by the conduct of her husband, wife left her matrimonial home. After few years, they reconciled at the intervention of well wishers and the wife returned to her matrimonial home where she conceived second time. At the advanced stage of her pregnancy she went to her parents. On 10.08.2014, a son was born to her. Since, the birth of

her son, the wife has been living at her parental home at Kamalpur along with her son. The daughter is living with his appellant father. After the birth of their son on 10.08.2014, the couple did not have cohabitation. On 28.01.2015, she filed the suit for dissolution of marriage by a decree of divorce in the Court of Additional District Judge at Kamalpur. [3] Appellant contested the suit by filing written statement. He pleaded that the only reason of their separation is his refusal to live as a 'Ghar Jamai' in his in-laws' house. When he refused this proposal, his in-laws started misbehaving with him and one day in his absence at home, the parents of his wife had taken her back to Kamalpur where the son was born. His wife did not even allow him to meet his son. He made earnest efforts to restore their relationship. For this purpose, he visited Kamalpur several times but his wife and in-laws did not even allow him to enter into their house. The appellant made a prayer to the Court to dismiss the petition of his wife seeking divorce.

FA No. 03 of 2017 [4] The trial court had taken initiative for reconciliation of their dispute. When the efforts failed, the learned Additional District Judge took up the case for trial and framed the following issues on the basis of the pleadings of the parties:

- (i) Whether the petition is maintainable in its present form.
- (ii) Whether the wife was subjected to cruelty by her husband for dowry.
- (iii) Whether the wife is entitled to a decree of divorce.
- (iv) What are the other relief/reliefs the parties are entitled to.

[5] In the course of trial, the wife examined herself as PW-1, her father Ashok Upadhyay as PW-2, mother Puspa Upadhyay as PW-3, her neighbours Kaushal Kishore Ahir and Sanjib Ahir as PW-4 and PW-5 respectively and Dr. Jiteswar Ahir as PW-6. The wife also relied on two medical prescriptions which were taken into evidence and marked as Exbt.1 and Exbt.2. The appellant on the other hand examined himself as OPW-1, one Sitaram Gour as OPW-2, Umprakash Gowala as OPW-3 and one Janardhan Ahir as OPW-4.

[6] On appreciation of evidence, the trial court held that matrimonial offence of cruelty was proved against the husband and moreover the spouses had no trust and respect for each other. Court held that the spouses were living separately continuously for a period of 2 years prior to the institution of the case and their marriage had broken irretrievably. In this view of the matter, the trial court granted divorce in favour of the petitioner wife observing as under:

"11(ix) In the case at hand it is not in dispute that the parties have been living separately for 2 years and they no longer trust each other. Thus forcing her to live with the husband shall not serve any fruitful purpose. Following the ratio of the above decisions for the purpose of Hindu Marriage Act cruelty means such acts which give rise to a valid and reasonable appreciation in the mind of the spouse that it will be harmful for one spouse to live with the other. In the case at hand, there is no reason to believe that the marital ties can be revived. Situated thus, the FA No. 03 of

2017 allegation of desertion. This coupled with the fact that the marriage has irretrievably broken down the allegation of cruelty is proved. Accordingly, the issue No. (i) and (ii) are decided in favour of the petitioner."

[7] Being aggrieved, appellant husband has challenged this judgment and order dated 03.02.2017 by filing this appeal mainly on the following grounds:

(i) The trial court failed to appreciate the fact that the wife could not adduce any proof of cruelty against her husband and in the given fact situation where two children were born to the spouses, it would be against the interest of the spouses as well as against the interest of the children and the society at large to sever their marital tie by a decree of divorce.

(ii) The trial court has come to an erroneous conclusion by treating irretrievable breakdown of marriage as a ground of divorce. [8] Ms. Sarama Deb, counsel appearing for the appellant has argued that since there is no proof of cruelty, the learned trial court should not have passed a decree of divorce in the suit. Counsel contends that right from the beginning of her marriage, the wife was reluctant in discharging her matrimonial obligations to her husband which is evident from the pleadings and evidence. Counsel contends that the wife herself admitted by adducing the evidence of Dr. Jiteswar Ahir (PW-6) that she had been suffering from psychological disorder. Counsel submits that despite her psychological problems, the appellant wants to continue his marital relationship with the respondent considering the future of their children. Ms. Deb, learned counsel also submits that their daughter who was born in 2007 is now 15 years' old and a divorce between her parents at this age of her would spoil her life. Counsel contends that since no ground of divorce has FA No. 03 of 2017 been proved, the marriage should be saved by setting aside the judgment and decree passed by the learned trial court.

[9] From the other side, Mr. R.G. Chakraborty, learned counsel contended that respondent wife adduced sufficient evidence before the trial court with regard to cruelty meted out to her by her appellant husband. Counsel contended that she had to consult the psychiatrist due to the trauma suffered by her at the hands of her cruel husband. Counsel submitted that the wife had no psychological disorder before her marriage. She became psychologically disturbed due to continuous torture of her husband at her matrimonial home. Counsel contends that the relationship between the spouses has become a deadwood and the learned trial Judge has correctly held that no purpose will be served by keeping their relationship alive. It is, therefore, urged by Mr. Chakraborty, learned counsel to dismiss the appeal and affirm the judgment and decree passed by the learned trial court.

[10] To evaluate the submissions made by the counsel of the parties, it would be appropriate to revisit the evidence for determination of the appeal. So far as the ground of cruelty is concerned, the question whether the ground has been established by the wife or not, can only be determined if we keenly appreciate the evidence as recorded by the trial court. [11] As discussed, the respondent wife adduced as many as six witnesses including herself. She as PW-1 has stated in her examination in chief that after solemnization of her marriage with the appellant as per Hindu rites and customs on 18.06.2006, she started conjugal life with the appellant at his house. On 11.08.2007, their daughter was born in Makunda Christian Leprosy and General Hospital at Karimganj. She brought various

allegations of cruelty against her FA No. 03 of 2017 appellant husband. According to her, almost on every day he used to come home late night after consuming liquor and commit physical torture on her. He did not change his habits even after the birth of their daughter. As a result, it was very difficult for her to live and cohabit with her appellant husband. She informed her parents. They came and brought her back to them to save her from the torture of her husband. On 17.05.2013, she returned back to her matrimonial home after reconciliation at the intervention of their well wishers. She again conceived. Her appellant husband became annoyed after he came to know that the wife conceived second time. He did not even take her to doctors. Ultimately, he drove her out of his home keeping the minor daughter with him. She was then shielded by her parents. On 10.08.2014, their son was born in Sarkar clinic and nursing home at Agartala. Her husband never came to visit their son either at the hospital or at her parental home. She asserted in her examination in chief that her father gave valuables like colour TV, 5 bhari gold ornaments, utensils, furniture and Rs. 1 lakh in cash during her marriage. But her appellant husband was so greedy and torturous that she could not live with her.

In her cross examination, she has stated that her daughter has been living with her appellant father. She has denied the suggestion that at the instigation of her parents she left her matrimonial home. There is nothing more in her cross examination.

[12] Her father Sri Ashok Upadhyay [PW-2], in his examination in chief gave exactly the same statement given by his daughter. He also stated that after marriage his daughter led conjugal life with her husband. One year after their marriage, a daughter was born to them. Due to unbearable harassment of her husband, she left her matrimonial home and after reconciliation she returned to FA No. 03 of 2017 her husband in 2014 and during her stay with her husband she again conceived and gave birth to their son at Agartala. Her brutal husband did not even visit their son after he was born.

This PW was also cross examined by the counsel of the appellant. In his cross examination, he denied that he forcefully brought back his daughter from her matrimonial home.

[13] Smt. Puspa Upadhyay [PW-3], is the mother of the respondent wife. She has also given exactly the same statement which have been given by her husband and daughter. Regarding cruelty of her appellant son-in-law on her daughter, the PW has given verbatim statement. It is, therefore, needless to repeat the statement made by her in the trial court.

In her cross examination, she stated that after they brought back their respondent daughter from her matrimonial home, their son-in-law had also filed a case against them at Karimganj police station. She denied the suggestion of the counsel of her son-in-law that she brought back her daughter from her matrimonial home by force against the will of her appellant husband. [14] Sri Kaushal Kishore Ahir [PW-4], has stated that he attended the marriage ceremony between the parties at Karimganj on 18.06.2006. Thereafter, her husband used to commit torture on her. As a result of which she left her matrimonial home along with her daughter who was born to them after one year of marriage. Subsequently, they reconciled and renewed their marital life. Even thereafter, the appellant husband of the respondent wife continuously tortured her. Thereafter, on 16.06.2014,

her husband drove her out of his home.

In his cross examination, he denied to have given a false statement. FA No. 03 of 2017 [15] Sri Sanjib Ahir [PW-5], also deposed that appellant husband of the respondent used to commit torture on his wife after consuming alcohol. However, two children were born to them even in the midst of their differences. But, ultimately, she was driven out by her husband of her matrimonial home. [16] Dr. Jiteswar Ahir [PW-6], stated that the respondent wife once came to him for treatment. He discovered that the respondent had been suffering from psychopathic disorder. He advised her to go to Dr. Anup Debnath, a psychiatrist doctor of Bimal Singha Memorial Hospital, Kamalpur. Since Dr. Anup Debnath worked with him in the same hospital, PW-6 was acquainted with his handwriting. Therefore, he identified the contents and signature of the prescription [Exbt.2] written by Dr. Anup Debnath, psychiatrist.

[17] Anil Kumar Tripathi [OPW-1], appellant husband has given a completely different version in his examination in chief. According to him, his wife and her parents wanted him to be a 'Ghar Jamai' in their house. In view of the fact that his parents were old and infirm, he declined such proposal and tried to convince his wife as to why his presence with his parents was necessary. But the wife did not agree. She started misbehaving with him. When he was in Delhi to pursue a work, the parents of his wife brought her back to them without even informing him. After he returned home from Delhi, his neighbours as well as his daughter told him about the entire episode. He immediately met his wife and her parents at Kamalpur. He requested them to allow his wife to go back with him. But they declined. He further asserted in his examination in chief that as a result of her separation with her mother, their daughter Manasi became very shocked and mentally upset. He denied all allegations of his wife and said that everything was manufactured by his wife and her parents.

FA No. 03 of 2017 In his cross examination, he admitted that he lodged a theft case against the parents of his wife in which both of them were acquitted for want of evidence.

[18] Sri Sitaram Gour [OPW-2], gave no different statement. He said exactly what has been said by OPW-1. Therefore, reproduction of the assertions made by him in his examination in chief at this place will amount to repetition. [19] Sri Umprakash Gowala [OPW-3], is another witness who came and deposed on behalf of the appellant husband. It is stated by OPW-3 that after marriage, a daughter and a son was born to the spouses and after the birth of the daughter, the respondent wife had withdrawn herself from the company of her husband. Subsequently, at the intervention of their well wishers, they reconciled and renewed their marital life. During that period, a son was born to them. Even thereafter, they could not live together. The wife left for her parental home whereas the appellant husband is living alone along with his daughter at his home.

[20] Sri Janardhan Ahir [OPW-4], asserted in his evidence that since the appellant declined to live as a 'Ghar Jamai', his wife and her parents were not happy with him. Ultimately, his wife created a plot and returned back to her parental home.

[21] Perusal of the evidence discussed hereinabove would demonstrate that matrimonial discord was apparent in the relationship between the appellant and his wife. Evidently, they were married in

June, 2006. In the next year, a daughter was born to them. After her birth, they got separated and few years after separation they reconciled and started living together when a son was born FA No. 03 of 2017 to them in the year 2014. For the last 6-7 years, the spouses have been living separately.

[22] Admittedly, the son is living with his mother whereas the daughter who is now almost 15 years' of age is living with her father. It is not also denied that the wife had developed psychopathic disorder for which she met Dr. Jiteswar Ahir and under the advice of Dr. Ahir [PW-6] she visited Dr. Anup Debnath, a psychiatrist who treated her over a period of time.

[23] About cruelty, the wife has made several allegations against her husband. One of those allegations is that her husband was an alcoholic who used to torture her almost in every night under the influence of liquor. The husband, on the other hand, has brought counter allegations against his wife. It is stated by the appellant husband and his witnesses that since the appellant denied to live as a 'Ghar Jamai' in his in-laws' house, the parents of his wife brought her back to her parental house.

[24] Now the question which falls for our consideration is whether the facts and circumstances appearing from evidence constitute the matrimonial offence of cruelty contemplated under section 13(1)(ia) of the Hindu Marriage Act. Cruelty has not been defined under the act. However, the Apex Court in a catena of decisions has dwelt on the issue and made observations as to the line of enquiry which will be necessary for drawing the inference as to whether cruelty was meted out to the aggrieved spouse by the offending spouse. In this regard, in *Shobha Rani vs. Madhukar Reddi* reported in (1988) 1 SCC 105, the Apex Court has observed as under:

"4. Section 13(1)(i-a) uses the words "treated the petitioner with cruelty". The word "cruelty" has not been defined. Indeed it could not have been defined. It has been used in relation to human FA No. 03 of 2017 conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted."

[25] In a subsequent decision in *Parveen Mehta vs. Inderjit Mehta* reported in (2002) 5 SCC 706, the Apex Court has held that so far as mental cruelty is concerned, there cannot be any direct evidence to mental cruelty and the Court will have to draw inference from a careful examination of the facts and circumstances of the case. The observation of the Apex Court in this regard is as under:

"21.....A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living....."

[26] In *A. Jayachandra vs. Aneel Kaur* reported in (2005) 2 SCC 22, it has been observed by the Apex Court that to ascertain whether cruelty was committed or not, the court should enquire into the nature of cruel treatment meted out to the complaining spouse by the other spouse and the impact of such treatment on the mind of the spouse and the Court reiterated the principles laid down in *Shobha Rani (supra)* and held as under:

"11. The expression "cruelty" has been used in relation to human conduct or human behavior. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The FA No. 03 of 2017 cruelty may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.(See *Shobha Rani v. Madhukar Reddi.*)"

[27] While dwelling on the issue as to what would be the tests of cruelty in a matrimonial relationship, the Apex Court in *Dr. N.G. Dastane vs. Mrs. S. Dastane* reported in (1975) 2 SCC 326, observed as follows:

"32.....Spouses are undoubtedly supposed and expected to conduct their joint venture as best as they might but it is no function of a court inquiring into a charge of cruelty to philosophise on the modalities of married life. Someone may want to keep late hours to finish the day's work and someone may want to get up early for a morning round of golf. The Court cannot apply to the habits or hobbies of these the test whether a reasonable man situated similarly will behave in a similar fashion. The question whether the misconduct complained of constitutes cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the acts. The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse. That which may be cruel to one person may be laughed off by another, and what may not be cruel to an individual under one set of circumstances may be extreme cruelty under another set

of circumstances.

The Court has to deal, not with an ideal husband and ideal wife (assuming any such exist) but with the particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court for, even if they may not be able to drown their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures. As said by Lord Reid in his speech in *Gollins v. Gollins*, In matrimonial cases we are not concerned with the reasonable man, as we are in cases of negligence. We are dealing with this man and this woman and the fewer a priori assumptions we make about them the better. In cruelty cases one can hardly ever even start with a presumption that the parties are reasonable people, because it is hard to FA No. 03 of 2017 imagine any cruelty case ever arising if both the spouses think and behave as reasonable people."

[28] In *Samar Ghosh vs. Jaya Ghosh* reported in (2007) 4 SCC 511, the Apex Court after surveying the previous judgments on the issue viewed that no uniform standard or guidelines could be laid for the purpose of judging cruelty. But, the Court enumerated some instances which may be relevant in dealing with the cases of mental cruelty and held that those instances indicated by the Court were only illustrative and not exhaustive which are as under:

"101.....

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.



(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

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(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty." [29] One of the interesting features of this case is that though the respondent wife has brought various allegations against her appellant husband, the appellant is genuinely willing to continue the marital relation with his wife. A scrutiny of the evidence led by the respondent wife at the trial court would reveal that the respondent wife has succeeded to substantiate acts of cruelty by adducing convincing evidence. It is on record that she has become a patient of mental disorder for which she required continuous treatment under a psychiatrist. Despite that the appellant husband is willing to keep the marital tie unsevered. But his testimony is difficult to believe in the face of overwhelming evidence against him. Even after the respondent returned to her husband for restoration of their FA No. 03 of 2017 relationship, she was subjected to cruel treatment again. Finally, she was compelled to take shelter in her parental house. At that time

she was carrying. The appellant did not even meet her during her pregnancy. Moreover, in the given facts and circumstances, the findings of the trial court that marriage has broken down beyond repair is not an exaggerated observation.

[30] Having applied the tests of cruelty laid down by the Apex Court in the judgments cited to supra and having appreciated the submissions of learned counsel representing the parties and scrutinized the records, we are of the view that the respondent wife has established the ground of cruelty to the hilt. Thus, we are not persuaded to interfere with the impugned judgment and the decree of divorce.

[31] Having observed thus, the appeal stands dismissed. Draw the decree and thereafter the Registry shall send down the LC record.

Pending application(s), if any, shall also stand disposed of.

JUDGE

JUDGE

Rudradeep

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