

**HIGH COURT OF TRIPURA
AGARTALA**

Mat. Appl. No. 21 of 2019

B E F O R E

HON'BLE MR. JUSTICE S.TALAPATRA

HON'BLE MR. JUSTICE S.G.CHATTOPADHYAY

Smt. Swapna Sinha

Daughter of Shri Chandra Badhan Sinha
Rajbari: Mandappara
Sub-division :Dharmanagar
District: North Tripura

.....Appellant(s).

Versus

Shri Bimal Sinha

Son of late Bhagya Sinha
Sub-division: Kailashahar
District : Unakoti Tripura

..... Respondent(s).

For Appellant(s) : Ms. A.Debbarma, Adv.

For Respondent(s) : Mr. D.C.Saha, Adv.

Whether fit for reporting :

Yes	No
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J U D G M E N T

[Per S.G.Chattopadhyay, J]

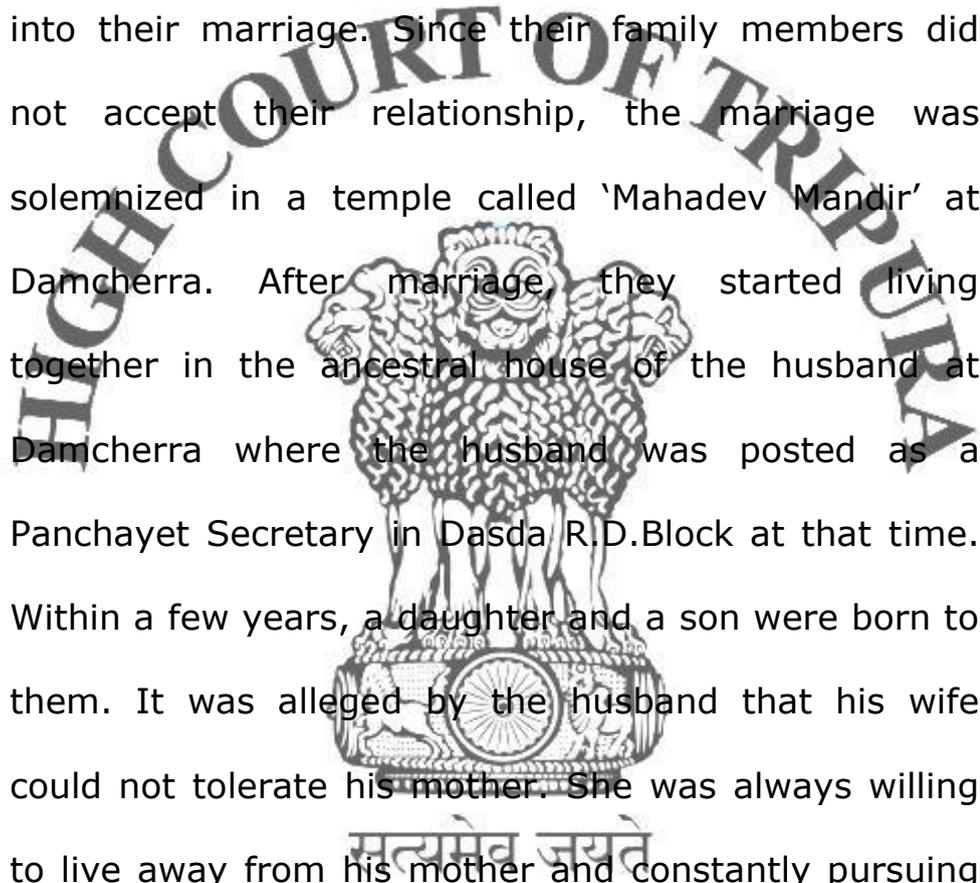
[1] This appeal is directed against the judgment dated 05.01.2019 delivered by the District Judge, North Tripura Judicial District, Dharmanagar in Case No. T.S. (Divorce) 53 of 2017. The respondent

(‘husband’ hereunder) filed a petition in the court of District Judge, North Tripura, Dharmanagar under Section 13(1)(i-a) & (i-b) of the Hindu Marriage Act, 1955(‘the Act of 1955’ hereunder) against the appellant (‘wife’ hereunder) praying for dissolution of their marriage by a decree of divorce on the ground of cruelty and desertion. The learned District Judge declined to grant decree of divorce in the suit. Instead, by the impugned judgment dated 05.01.2019 delivered by him in case no T.S.(Divorce) 53 of 2017, he passed a decree for judicial separation in exercise of his power under Section 13A of the Act of 1955. The aggrieved wife has, therefore, preferred this appeal under Section 28 of the Act of 1955 read with Section 19 of the Family Courts Act, 1984 challenging the legality of the impugned judgment passed by the learned District Judge, Dharmanagar, North Tripura.

[2] The undisputed facts are that both the husband and wife are Hindus and governed by the provisions of the Act of 1955. Their marriage was solemnized on 13.09.1993 as per Hindu rites and

customs and a daughter and a son were born to them within their wed lock.

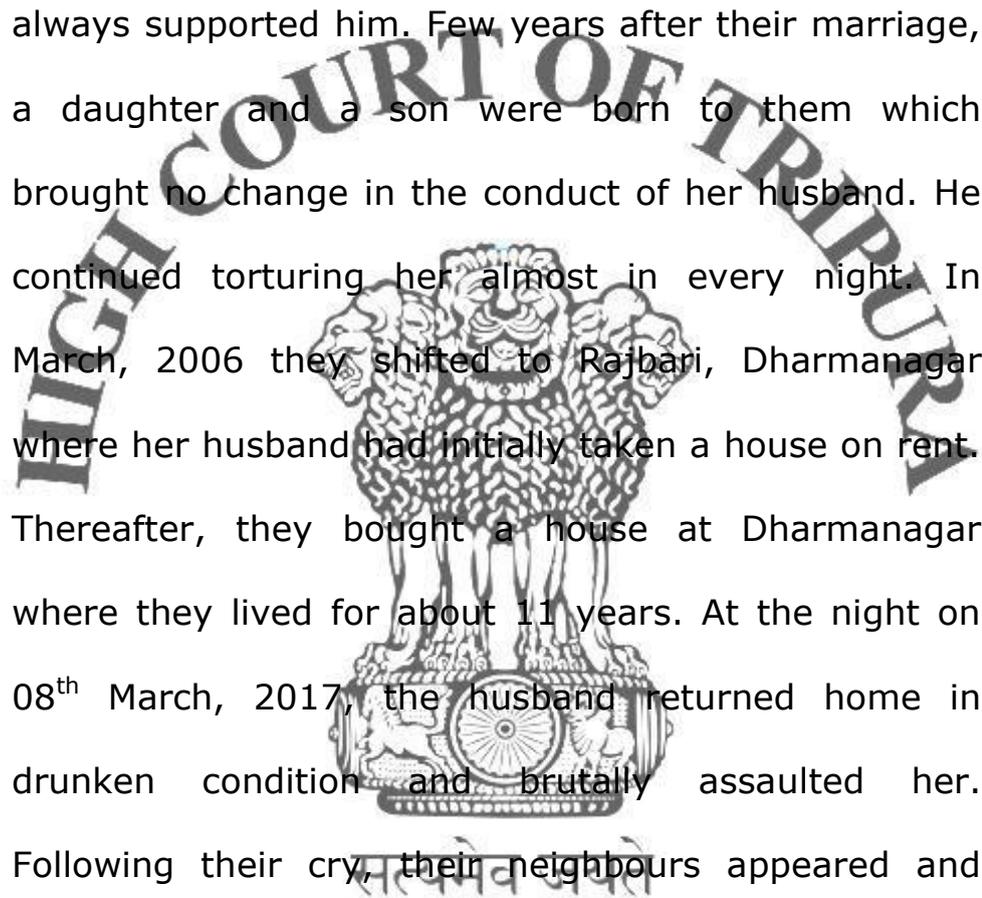
[3] In the divorce proceedings, the husband brought several allegations of cruelty against his wife. According to him, they had love affairs which matured into their marriage. Since their family members did not accept their relationship, the marriage was solemnized in a temple called 'Mahadev Mandir' at Damcherra. After marriage, they started living together in the ancestral house of the husband at Damcherra where the husband was posted as a Panchayet Secretary in Dasda R.D.Block at that time. Within a few years, a daughter and a son were born to them. It was alleged by the husband that his wife could not tolerate his mother. She was always willing to live away from his mother and constantly pursuing her husband to take a house on rent elsewhere so that they could stay away from her mother-in-law. Since the husband did not agree to her proposal, she started ill treating his mother. She stopped cooking at home and started quarrelling with her husband on trivial



issues. Even during midnight, she used to quarrel with her husband loudly. The irritated neighbours started agitating against them. As a result, the husband took a house on rent at Rajbari, Dharmanagar and started residing there with his wife and children. Gradually their relationship worsened and he parted with the company of his wife and started living separately at Kirtantali, Kailashahar in Unakoti. Having found no possibility of restoration of their conjugal life, the husband filed the petition in the Court of the District Judge seeking divorce on the ground of cruelty and desertion.

[4] The wife contested the petition and refuted the allegations made against her by her husband. She brought counter allegations against her husband. According to her, all allegations brought by her husband were false and baseless. She alleged that her husband deserted her and her two children in a hapless condition in March, 2017 and he never came back. It was also alleged by the wife that after marriage, when she started living with her husband at

Damcherra, her husband and her mother-in-law subjected her to harassment for dowry. Her husband demanded Rs.1,00,000/- in cash and for the fulfilment of his demand he used to commit physical torture upon her in intoxicated condition. Her mother-in-law always supported him. Few years after their marriage, a daughter and a son were born to them which brought no change in the conduct of her husband. He continued torturing her almost in every night. In March, 2006 they shifted to Rajbari, Dharmanagar where her husband had initially taken a house on rent. Thereafter, they bought a house at Dharmanagar where they lived for about 11 years. At the night on 08th March, 2017, the husband returned home in drunken condition and brutally assaulted her. Following their cry, their neighbours appeared and rescued her. Immediately thereafter, her husband left home and he never returned thereafter. According to the wife, she always tried to live a happy conjugal life with her husband. But there was no response from his side. Rather, he always treated her with cruelty and ultimately deserted her and her children. Denying the



allegations of cruelty and desertion brought against her by her husband, she urged for dismissal of the petition of her husband.

[5] The learned trial court, on the basis of the aforesaid pleadings of the parties, framed the following issues in the Suit:

(i) Whether the marriage between the parties was solemnized in accordance with the Hindu rites and customs at Damcherra Mahadev Mandir.

(ii) Whether the husband is entitled to a decree of divorce on the ground of cruelty and desertion?

(iii) What other relief/reliefs the parties are entitled to?

[6] To prove his case, the husband adduced the evidence of himself and 2 other witnesses. The witnesses who were examined by him are as follows:

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(i) PW-1, Shri Bimal Sinha, the husband.

(ii) PW-2, Sri Manikanta Sinha who is a neighbour of the husband.

(iii) PW-3, Shri Khelendra Rajkumar who is also a neighbour of the husband.

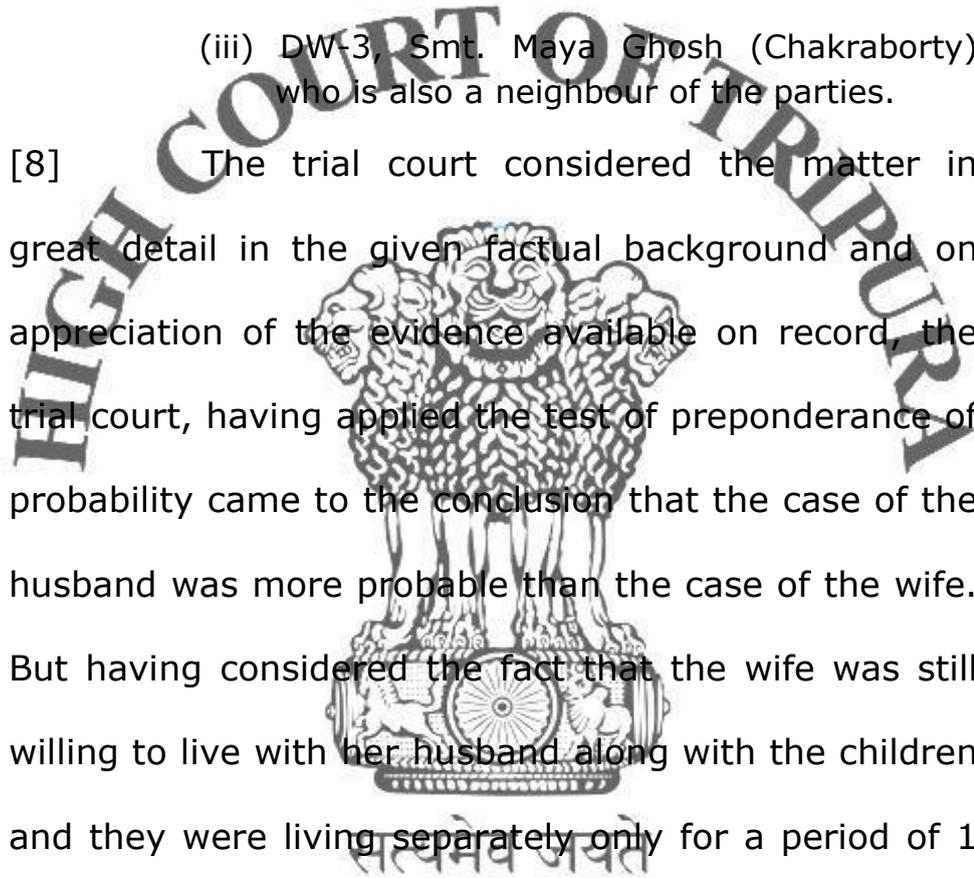
[7] The wife on the other hand adduced the evidence of herself and 2 other witnesses. The witnesses adduced on her behalf were as follows:

(i) DW-1, Smt. Swapna Sinha, the wife herself.

(ii) DW-2, Sri Gopisena Sinha who is a neighbour of the parties.

(iii) DW-3, Smt. Maya Ghosh (Chakraborty) who is also a neighbour of the parties.

[8] The trial court considered the matter in great detail in the given factual background and on appreciation of the evidence available on record, the trial court, having applied the test of preponderance of probability came to the conclusion that the case of the husband was more probable than the case of the wife. But having considered the fact that the wife was still willing to live with her husband along with the children and they were living separately only for a period of 1 and ½ years prior to the institution of the suit and the relationship was not broken down completely, the learned District Judge, instead of granting divorce, decreed the suit for judicial separation. Relevant extract of the findings of the learned District Judge is as under:



"17. On due evaluation the evidence of the respondent, her evidence that immediate after five months of marriage the petitioner used to return home at late night being intoxicated and used to torture her on demand of cash money is not believable only on the simple ground that had the petitioner regularly and continuously tortured her on demand of cash money then at least a single complaint to any authority would have been made but in the case of the respondent wife no such complaint was made anywhere. The evidence of the respondent wife further cannot be believable for that had the petitioner husband used to torture his minor daughter and son then she could have produce those son and daughter before the court to depose the same but she has not done the same.

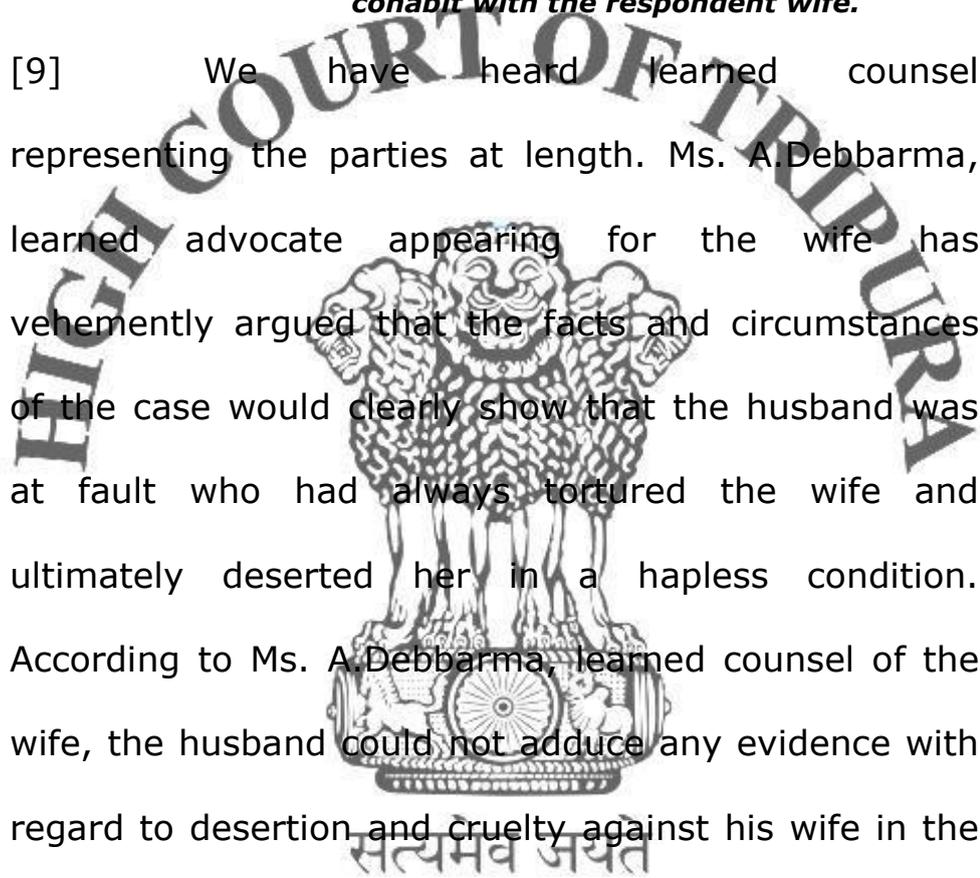
18. Be that what may, the petitioner's case has been proved by the preponderance of evidence. The respondent failed to rebut the evidence of the petitioner. Section 13(1)(i-a) of the Act clearly specifies the cruelty as a ground of divorce and the petitioner husband has proved that the respondent wife treated him with cruelty since after marriage. Now question arises whether in the facts and circumstances of the case decree of judicial separation will suffice instead of granting decree of divorce. What I notice is that though the petitioner has proved that the respondent treated him with cruelty but the respondent wife is still willing to live with him peacefully along with their children. They have been living separately only for about 1 and ½ years due to sudden quarrel. Therefore, it can be said that the marriage has not been broken down beyond repair or hope of salvage. There is still hope to repair the marital tie of the parties. Therefore, the factual situation in the case justifies the grant of judicial separation instead of

granting of divorce on the ground of cruelty. Judicial separation will serve the purpose in the facts and circumstances of the case.

ORDER

19. In view of the decision held above it is decreed that the petitioner husband and the respondent wife shall live separately judicially. It is no longer obligatory for the petitioner husband to cohabit with the respondent wife."

[9] We have heard learned counsel representing the parties at length. Ms. A. Debbarma, learned advocate appearing for the wife has vehemently argued that the facts and circumstances of the case would clearly show that the husband was at fault who had always tortured the wife and ultimately deserted her in a hapless condition. According to Ms. A. Debbarma, learned counsel of the wife, the husband could not adduce any evidence with regard to desertion and cruelty against his wife in the trial court. But the learned trial court without appreciation of evidence decreed the suit for judicial separation relying on the unsubstantiated evidence of the husband. As a result, the decree of judicial separation granted by the learned trial court is liable to be set aside in this appeal.



[10] Mr. D.C.Saha, learned counsel appearing on behalf of the respondent husband has argued that the relationship between the appellant wife and her respondent husband has totally broken down and there seems to be no chance of retrieval at all. According to learned counsel it has been proved before the trial court that the appellant wife subjected her husband to enormous mental cruelty and ultimately deserted him without any genuine reason and even thereafter, she brought unfounded allegations against him and his mother which were proved to be false in the trial court. According to Mr. Saha, learned counsel, the trial court rightly passed the decree of judicial separation which does not deserve any interference in appeal.

[11] As noted by us, the husband has not denied the marriage and paternity of the children. He sought for a decree of divorce on the ground of cruelty and desertion and tried to establish a case that right from the beginning of their marriage, his wife ill treated him and his mother and at one point of time she became

so violent that the husband had to change his residence from Damcherra to Dharmanagar from where they were separated in March, 2017. Due to the unendurable conduct of his wife, the husband started living away from his wife and children at Kirtantali, Kailashahar in Unakoti.

A relook into the evidence adduced by the husband is necessary to test the veracity of his claim.

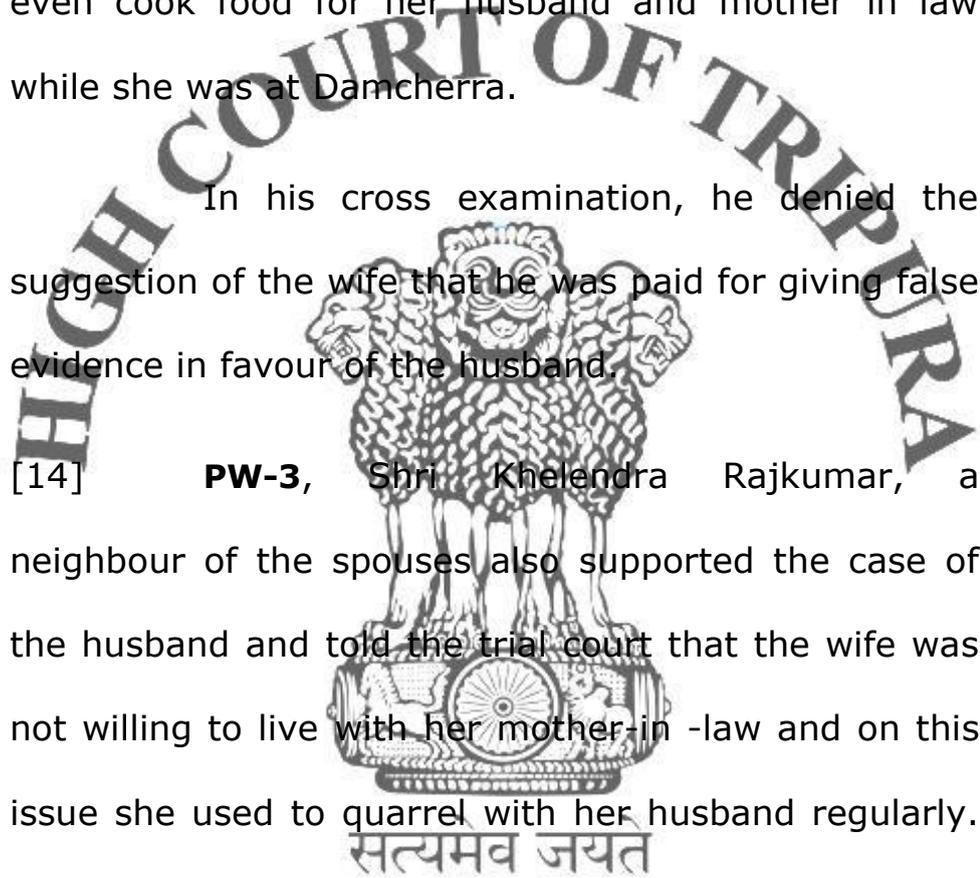
[12] In his examination-in-chief on affidavit, the husband had recapitulated his plaint case. According to him, his wife treated him and his mother with cruelty right from the beginning of their marriage. As a result of which the conjugal relationship between them deteriorated which resulted in their separation in March, 2017. In his cross examination, he denied the suggestion of his wife that his wife never misbehaved with him or his mother. He also denied her suggestion that in fact he tortured her for dowry and ultimately deserted her.

[13] Shri Manikanta Sinha, who deposed in the trial court as **PW-2** supported the case of the husband

in his examination -in- chief on affidavit. He told the trial court that the wife used to quarrel with her husband even during midnight. As a result of which her husband had to leave Damcherra and take a house on rent at Rajbari in Dharmanagar. The wife did not even cook food for her husband and mother in law while she was at Damcherra.

In his cross examination, he denied the suggestion of the wife that he was paid for giving false evidence in favour of the husband.

[14] **PW-3**, Shri. Khelendra Rajkumar, a neighbour of the spouses also supported the case of the husband and told the trial court that the wife was not willing to live with her mother-in-law and on this issue she used to quarrel with her husband regularly. The PW saw the husband preparing food for the family on many occasions because his wife refused to cook food. Even after the spouses started living at Rajbari in Dharmanagar, the wife continued quarrelling with her husband. In his cross examination, the PW denied to have given false evidence in favour of the husband.



He also denied all other suggestions which were put to him by the wife during his cross examination.

[15] The wife on the other hand, apart from denying the case of her husband, brought counter allegations against him in the District Court. According to her, the husband was wholly responsible for termination of their relationship. It was stated by the wife [PW-1] that her husband was an alcoholic who used to torture her almost in every night in drunken condition for fulfilment of his demand of dowry. She was also physically assaulted by her husband on several occasions and ultimately on 8th March, 2017, her husband deserted her when she was living at Rajbari in Dharmanagar.

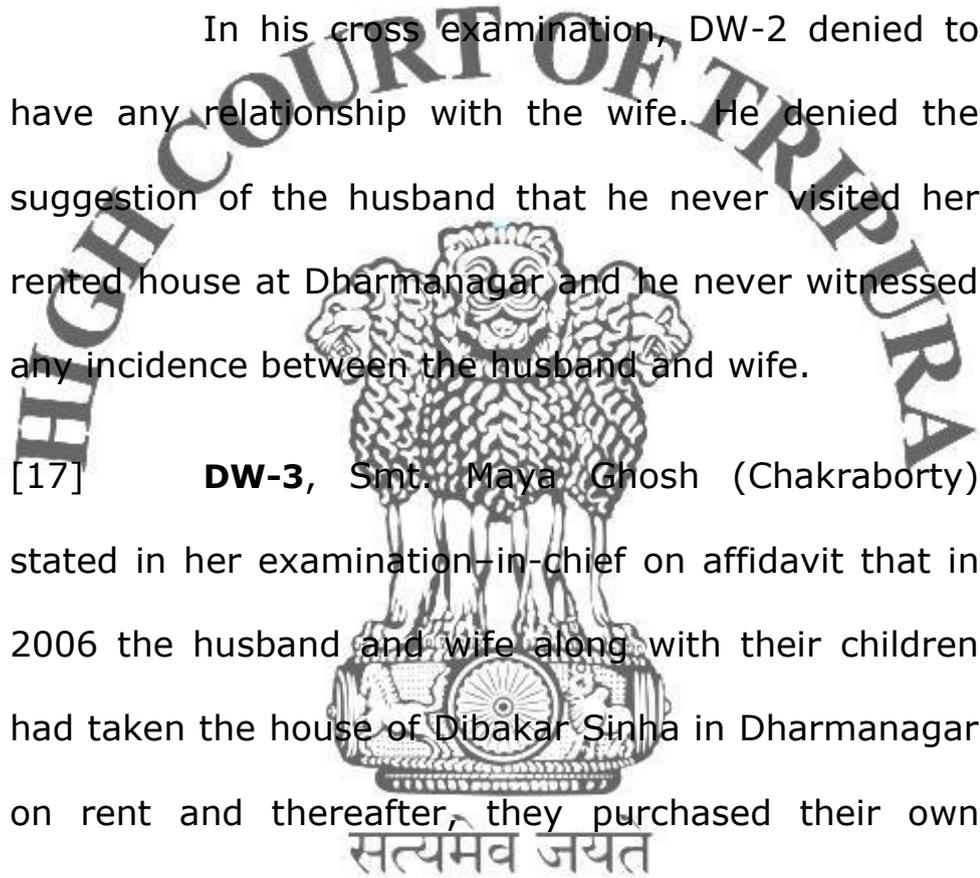
In her cross examination, she denied the suggestion of her husband that she ill treated him and his mother. She also denied his suggestion that she gave false evidence against him in the trial court.

[16] Her witness Gopisena Sinha, DW-2, supported her case in his examination-in-chief on affidavit wherein the DW stated that he witnessed the

husband physically assaulting his wife and on 8th March, 2017, he met the wife at her house in Dharmanagar when she told the DW that her husband left the house after assaulting her in drunken condition.

In his cross examination, DW-2 denied to have any relationship with the wife. He denied the suggestion of the husband that he never visited her rented house at Dharmanagar and he never witnessed any incidence between the husband and wife.

[17] **DW-3**, Smt. Maya Ghosh (Chakraborty) stated in her examination-in-chief on affidavit that in 2006 the husband and wife along with their children had taken the house of Dibakar Sinha in Dharmanagar on rent and thereafter, they purchased their own house. During their stay in the rented house, the husband used to assault his wife physically in intoxicated condition almost in every night. At the night in March, 2017 the DW along with other neighbours visited their house and saw the husband



beating the wife. Seeing the neighbours, he left the house bag and baggage.

In cross examination, it was suggested to the witness that the alleged incidence of physical torture of the wife was not true and she did not witness such incidence. She denied the suggestion.

[18] The trial court seems to have believed the case of the husband that his wife treated him with cruelty after marriage and ultimately deserted him. Having recorded his finding that the husband proved the grounds of divorce by adducing evidence, the learned trial court instead of granting decree of divorce to the husband, decreed the suit for judicial separation under Section 13A of the Act of 1955 because the court believed that the marriage did not break down completely.

[19] The husband filed the petition for divorce in the Court of the District Judge on 13.11.2017. In paragraph 19 of his petition he stated that he started living separately from his wife from the month of March, 2017. Therefore, even if, for argument's sake,

it is conceived that the wife deserted the husband in March, 2017, the ground of desertion as contemplated under Section 13(1)(i-b) was not lawfully available to the husband because the husband could not prove that his wife deserted him for a continuous period of not less than 2 years immediately preceding the presentation of the divorce petition. As such, the requirement of Section 13(1)(i-b) of the Act of 1955 was not fulfilled and the ground of desertion, as envisaged under Section 13(1)(i-b) of the Act of 1955 was not available to the husband.

[20] With regard to the allegation of cruelty, it has surfaced from the record that the parties are blaming each other for termination of their relationship. Case of the husband is that his wife always ill treated him and his mother and ultimately compelled him to part with her company. The wife brought counter allegations against her husband and alleged that he was a torturous husband who used to assault her almost in every night in intoxicated condition and ultimately deserted her and their

children. Both of them adduced evidence in support of their respective cases.

[21] As noticed by us, the spouses brought allegations and counter allegations against each other. While taking note of cruelty, trial court proceeded on the basis of preponderance of probability and held that husband's case with regard to cruelty was more probable than his wife's case. The view taken by the trial court was not correct because it escaped the notice of the learned trial judge that the wife brought graver charges of cruelty against her husband which was supported by eye witnesses. The wife alleged that she was physically assaulted by her drunken husband which was supported by DW-3 who happened to be in her house during the occurrence of one of such incidents. Apparently, learned trial Judge did not weigh her evidence in the same scale in which he weighed the evidence of the husband.

[22] Cruelty for the purpose of divorce is not defined. Section 13(1)(i-a) of the Act of 1955 under which 'cruelty' is made a ground of divorce simply

states that a marriage solemnized may be dissolved by a decree of divorce on a petition presented by either the husband or the wife on the ground that the other party- "(1).....

(i-a) has after the solemnization of the marriage treated the petitioner with cruelty; or."

[23] The Apex Court in a catena of decisions has discussed as to what amounts to cruelty for the purpose of divorce.

In the case of **V. Bhagat Vs. D. Bhagat (Mrs.)** reported in **(1994) 1 SCC 337** the Apex Court has succinctly held that cruelty for the purpose of matrimonial proceedings is the matter to be determined in each case having regard to the facts and circumstances of that case. Observations of the Apex Court vide paragraph 16 of the judgment is as under:

"16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature

that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made."

[24] Similar view was taken by the Apex Court in a later decision in **Vinita Saxena Vs. Pankaj Pandit** reported in **(2006) 3 SCC 778** wherein the Apex Court has held as under:

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"35. Each case depends on its own facts and must be judged on these facts. The concept of cruelty has varied from time to time, from place to place and from individual to individual in its application according to social status of the persons involved and their economic conditions and other matters. The question whether the act complained of was a cruel act is to be determined from the whole facts and the matrimonial relations between the parties. In this connection, the culture, temperament

and status in life and many other things are the factors which have to be considered.”

[25] In the case of **Vinita Saxena (Supra)**, the Apex Court with regard to cruelty, further held that it must be proved that one partner in the marriage mindless of the consequence has behaved in a way which the other spouse could not in the circumstances be called upon to endure, and that misconduct has caused to the other party injury to health or a reasonable apprehension of such injury.

[26] In **Mayadevi (Smt.) Vs. Jagdish Prasad** reported in **(2007) 3 SCC 136**, the Apex Court having relied on the decision of **Shobha Rani Vs. Madhukar Reddi, (1988) 1 SCC 105** held that to constitute cruelty, the conduct complaint should be grave and weighty so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse and such conduct must be something more serious than “ordinary wear and tear of married life”.

[27] In **Samar Ghosh Vs. Jaya Ghosh** reported in **(2007) 4 SCC 511**, the Apex Court after scrutiny and analysis of its earlier judgments on this issue came to the conclusion that there cannot be any comprehensive definition of the concept of mental cruelty within which all kinds of cases of mental cruelty can be covered. The Apex Court vide paragraph 101 of the judgment held that no uniform standard can be laid down for guidance and after holding such view the Hon'ble Apex Court enumerated some instances of human behaviour which may be relevant in dealing with the cases of mental cruelty which are as under:

"101..... The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(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.

(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.*

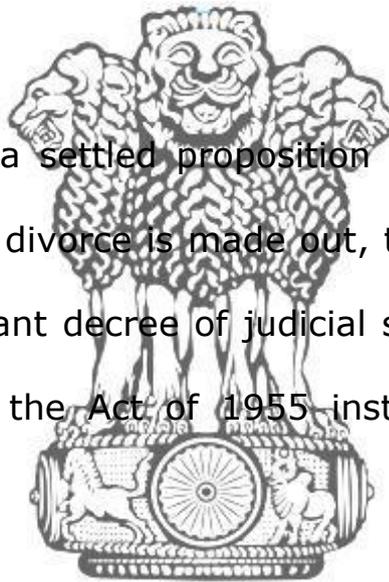
(xiv) *Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."*

[28] Having applied the tests laid down by the Apex Court in the judgments cited to supra, we are of the view that the allegations proved by the husband against his wife fall within "ordinary wear and tear of married life." The learned trial court should have appreciated the fact that marriage between the parties had taken place in 1993 and they lived together in the marital tie for more than 24 years despite their discord and differences and brought up their children together who have by this time attained adulthood. Their relationship would have come to end long back, unless they condoned the conduct of each other.

[29] In view of the tests laid down by the Apex Court in the judgments cited above, conduct of the wife, as attributed to her by her husband, cannot be considered as cruelty for the purpose of divorce. The incidents pointed out by the husband can only be considered as misunderstanding between the parties and as such we are of the considered view that the husband has failed to make out any ground of divorce in the case.

[30] It is a settled proposition of law that only when ground of divorce is made out, the court may at its discretion grant decree of judicial separation under Section 13A of the Act of 1955 instead of granting divorce.

[31] As discussed above, the husband failed to establish either of the grounds of desertion or cruelty against his wife in the trial court. As such, he was not entitled either to a decree of divorce or judicial separation. Since the learned District Judge observed that the relationship between the spouses did not dry up and there was chance of renewal of their



relationship, he should not have suspended their relationship by granting decree of judicial separation.

[32] Resultantly, the impugned judgment is set aside and the appeal is allowed.

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Saikat Sarma,PA