

Uma Talapatra Vs. Manabendra Talapatra

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Court : Kolkata

Decided On : Sep-13-2004

Reported in : 2008(4)CHN488

Judge : M.H.S. Ansari and ;Joytosh Banerjee, JJ.

Acts : [Special Marriage Act, 1954](#) - Section 27; ;Hindu Marriage Act - Section 13(1); ;Indian Penal Code (IPC) - Sections 120B, 403, 406, 420 and 498A

Appeal No. : F.A. No. 33 of 1998

Appellant : Uma Talapatra

Respondent : Manabendra Talapatra

Advocate for Def. : Paritosh Mallick and ;Sachidanand Sinha, Adv.

Advocate for Pet/Ap. : Puspendu Bikash Saha, ;Debasis Mitra and ;Amit Baran Das, Adv.

Disposition : Appeal dismissed

Judgement :

Joytosh Banerjee, J.

1. The instant appeal is directed against judgement dated 11.6.97 passed in Mat. Suit No. 20/95 by the Judge, Family Court Calcutta, whereby the matrimonial suit

was decreed and the marriage between the parties was dissolved by a decree of divorce. Being aggrieved by such judgement, the wife has filed the present appeal.

2. The husband Manabendra Talapatra filed the petition under Section 27 of the Special Marriage Act for a decree of divorce and that suit was registered as Mat. Suit No. 101/1993 in the City Civil Court, Calcutta. The said suit was later on transferred to the Family Court and was re-numbered as indicated above.

3. In his petition, the husband alleged that both the petitioner and the respondent were employees of L.I.C. of India and they developed intimacy, fell in love, although the respondent was physically handicapped lady being polio stricken from her childhood, decided to marry, and when their decision was accepted by their respective parents and family members, the petitioner married the respondent under the [Special Marriage Act, 1954](#). The said marriage was duly consummated and a girl child by the name of Monideepa was born to the parties on 19th June, 1985. It was alleged that a week after the said marriage very strange aspect of the respondent of character become evident to the petitioner when he found that the respondent began to doubt, and disbelieve even innocuous statements of the petitioner and made him swear as to the truth in very minor matters. After some days the wife began to cast aspersions on the petitioner alleging that he was involved in the affairs with female members of their office and went to the extent of alleging that the petitioner had illicit connection with the maid servant of the house who had been sent to work there by the wife's father's family. It was further alleged the respondent/wife also showed traits of sadism in her character and was short tempered and used to misbehave with the petitioner. It was further alleged that since the marriage, the respondent wife treated the petitioner with cruelty in the following manner:

4. As soon as the parties were alone in the room, wife used to prick the husband with all trivial incidents that took place in the office and at the house and each reference culminated in the petitioners being held responsible liable for the same. In every incident, the wife could see a 'plot' against her. In the fits of anger, the wife often threatened to commit suicide which created tremendous mental pressure on the husband. The accusations with regard to the husband dealings

with his female colleagues in the office reached such a stage that the husband had to voluntarily take transfer from the branch where he was working to another branch which was quite far away from his residence. It was further alleged that the respondent was a lady of uncontrollable temper and she had been suffering intermittently from mental disorder of such a kind and to such an extent that the husband could not reasonably be expected to live with her. It was also alleged that in one occasion when the wife/respondent lost her temper brother Sekhar Mukherjee happened to be present in the house of the petitioner and the said brother got beaten up and received a severe verbal lashing from the respondent for trying to pacify her.

5. Ultimately, the petitioner/husband being unable to bear the atrocities any further requested the father of the respondent/wife to come to his house and to take the respondent with him and to keep her at his residence till she would behave in a gentle manner. The respondent's father came to the petitioner's residence on 1st June, 1992 and the respondent left with him to reside in his residence. It is further alleged that even after that the respondent/wife on the plea of seeing her daughter used to visit the house, on many occasions, and invariably on those occasions used to pick up quarrels with the petitioner's family members. During one of such visits in December, 1992 she became very agitated and abused the petitioner and the members of his family in most filthy language. It is further alleged that in the early hours of the morning about 2.15 hrs. of 22.2.93, the petitioner and his cousin Indranil Talapatra were arrested from the residence by the police in connection with G.R. Case No. 408 of 93 filed against the petitioner/husband and members of his family under Section 498A/406/120B of IPC prosecution was launched at the instance of the wife/respondent. The child of the parties was taken away from the custody of the husband/petitioner by the respondent/wife in with connection, that case. The husband/petitioner and his cousin were produced before the Court of Additional Chief Metropolitan Magistrate, Calcutta and on the submission of the respondent/wife that she had got custody of the daughter, the Court granted bail to the petitioner and his cousin.

6. Subsequently, the respondent/wife withdrew the case. In this way, it is alleged that the petitioner/husband was further humiliated. In these facts and

circumstances of the case, the husband/petitioner prayed for a decree of divorce on the ground that after the solemnization of marriage, the respondent/wife treated the husband/petitioner with cruelty both mental and physical.

7. The respondent/wife contested the suit by filing written statement whereby she denied all the material allegations raised against her and contended, inter alia, that it was she who was purposely hackled, teased misbehaved by all members of the family due to her physical deficiency. Though she was quite capable to handle the matters of her child at home, but she was denied to come in close contact with the child on the apprehension that the close contact of the child with the mother would help to grow natural love, affection and sympathy and attachment to each other, which according to the allegation made in the written statement was not desirable to the in laws of the wife.

8. It was also alleged that her husband took her to one Dr. Goutam Ghose, a Psychiatrist for obvious purpose to collect a certificate of her mental disorder but he failed to obtain one. The doctor told him that the respondent/wife was O.K. Then in the first week of June, 1992, the respondent/wife was sent to her father's house for seven days. The petitioner/husband took her to one Dr. S.S. Talukdar (Homoeopath). The respondent came to know Dr. Talukdar was very much known to her husband. All the members of his family took Talukdar to be a real 'Superman, nothing less than the God'. Dr. Talukdar after invoking the spirit 'Jaganmata' by taking advices and direction of 'Jaganmata' pronounced 'Nidan' that the wife must not keep any contact with her husband and child for a long time. She must stay at her father's residence. She was required to chant Montras which Dr. Talukdar gave to avoid total disaster and in this way the respondent/wife was banished from her in-laws. During this period the husband/petitioner used to write letters to the wife in her office and used to send those letters through an office peon. Those letters were written only to warn her and remind her to what she was required to do under the advice of Dr. Talukdar.

9. It was further alleged that on 20.2.93, the respondent/wife took his old father with her to the house of her in-laws for a face to face discussion with the petitioner/husband and his other family members. But nothing could be discussed

as the members of the family insulted her old father by hurling abuses. They were virtually driven out of the house in the evening of 21.2.93. The wife/respondent lodged on FIR with Shyampukur PS alleging the entire facts and circumstances starting from her marriage, ill-treatment received at the hands of her in-laws and her ouster from the matrimonial home by the petitioner and members of his family. In connection with that case, the petitioner/husband and his cousin brother were arrested and produced to the Court of Additional Chief Metropolitan Magistrate, Calcutta, It is contended that considering the welfare of the child and the status of both the families the respondent/wife prayed to the Additional Chief Metropolitan Magistrate for releasing them on bail and the same was granted. Subsequently on being requested by common friends and the members of the family of the petitioner/husband the wife/respondent withdrew the case. It is further contended that in spite of all these happenings the respondent/wife still loves her husband and wants to live peacefully with him and her child and for that purpose she wants to resist the proceeding for divorce.

10. On the basis of the aforesaid pleadings, the learned Judge of the Court below raised as many as 6 issues including the following relevant issues:

Issue No. 2 - Did the respondent practice cruelty both physical and mental on the petitioner?

Issue No. 3 - Does the Respondent suffer from psychological disorder?

Issue No. 5 - Is the petitioner entitled to a decree of divorce as prayed for?

In his judgement, the learned Judge of the Court below on consideration of the evidence on record and other facts and circumstances came to a firm finding that the respondent/wife was guilty of practising cruelty both physical and mental on the petitioner/husband. That the respondent/wife got the petitioner arrested by filing complaint at Shyampukur PS which did not have jurisdiction and relations of the parties were such that they could not live together under the same roof as husband and wife and thus came to a conclusion that the petitioner/husband was entitled to get a decree of divorce against the respondent/wife. On the basis of the same, the learned Judge decreed the suit and dissolved the marriage of the

parties by a decree of divorce.

11. Being aggrieved by such decision, the appellant/wife has come up before this Court challenging such decision. So the only question before us is whether the learned Judge of the Court below has erred in decreeing the suit, on consideration of the evidence on record.

12. In order to prove his case, the husband/respondent of this appeal examined in all 10 witnesses including himself. P.W.1 Manabendra Talapatra is the petitioner/respondent of this appeal. His evidence indicates that he expressed his opinion about the conduct and behaviour of the wife. But unfortunately through his evidence he has not given any indication about specific incidents which helped him to form such opinion. Thus in the third paragraph of his deposition at page 35 of P.B. he has stated that in the first week of marriage he detected that the respondent (wife) was a lady who used to doubt about his (husband's) character and she began to say that the husband had an affair with other female office colleague of the department. She even accused the husband of having illicit relation with his maid servant. It is further disclosed in such evidence that the respondent/wife is a lady of violent temperament and in case of emotional outburst she used to abuse his husband, and she would even slap, kick and spit on the husband. The petitioner/husband further disclosed that the respondent even beat him with her sleeper on many occasions but once in front of other family members.

13. In this way, it is evident that the petitioner has tried to make out a case of cruelty by giving a general description regarding the impression he had about the character of his wife without disclosing any particular incident which actually prompted him to come to such a conclusion. The only incident, he disclosed was about a particular occurrence, which took place on 3rd June, 1992, It is the evidence of the petitioner that the respondent/wife who is the appellant here started be quarrelling with him at 8 p. m. and this continued till 2. a.m. of the next day and on 4th June, the respondent/wife was taken away by her father and brothers. It is to be noted here that in the petition filed by the husband for divorce, this specific allegation did not find any place. In Para 14 of the petition, at page 10 of P.B. the petitioner specifically stated that the respondent/wife's father came to

petitioner husband's residence on first of June, 1992 and the respondent left with him to reside in his residence and at that time, the respondent's father assured that till such time when she would behave normally, she would continue to reside at his place. No doubt in Para-15, the petitioner/husband has alleged that even after the departure of the wife from his house on first of June, 1992, the wife used to come to that house either with her father or with one of her brothers on the plea of seeing her daughter and on those occasions she used to pick up quarrels with the petitioner's family but there is no indication that after leaving the house, the respondent/wife stayed in the house and, therefore, the statement of the husband that on 3rd June, 1992, the wife/respondent started quarreling with him which continued up to 2 a.m. that is to say till the early hours of the next day, cannot be accepted as it is contrary to the pleading. P.W.2, Sampad Narayan Bhattacharjee is the Regional Manager, Eastern Zone, Life Insurance Corporation of India. His evidence indicates that he knew the parties of the case. Knowing about the disputes he tried to effect reconciliation between them but failed. He did not know about the allegation of cruelty practised by the wife on her husband and the members of his family, P.W.3 Smt. Kajal Basu is a neighbour of the petitioner's family. Her evidence disclosed that she know the parties since the day of their marriage and her house was at a distance of about 20 ft. from the house of the petitioner. She was also a regular visitor of the house of the petitioner but she never saw the respondent to practice any cruelty physical or mental on the petitioner. She only disclosed that she saw the wife/respondent when she went with her father from the petitioner's house and she also saw the respondent/wife while she was trying to enter the house of the petitioner with the help of outsiders. But she clearly stated that she never saw the petitioner and the respondent quarrelling with each other. P.W.4 Samar Kr. Bhattacharyya, was the Secretary of Staff Union of L.I.C., Lake Town Branch. His evidence indicated that he used to visit the house of the petitioner on many occasions along with his colleagues. It was his evidence that during the end a of July, 1992 he saw some persons including the brother of the respondent on the ground floor threatening the petitioner. When he enquired from the petitioner, he came to learn from him that respondent was living at her father's house and her brother and other relations were creating trouble almost everyday in the house. We must pause for a moment

to point out that the petitioner in his evidence did not disclose that there was any specific trouble towards the end of July, 1992 or 1 he had the occasion to report to P.W.4 regarding the trouble made by the brother of the wife and other relations of the wife almost everyday. P.W.5 Anusua Talapatra is the sister of the petitioner.

14. According to her about 20 days after the marriage, the respondent complained that the petitioner had affairs with another woman but later on the witness found that the respondent was a lady of very suspicious nature. Subsequently she also realised that the respondent was a lady of violent temper. The respondent used to break the articles. She even abused the witness by calling her 'Nasta Meye'. Unfortunately like the petitioner this witness also deposed in a general way about her impression, regarding the conduct of the respondent/wife but she failed to disclose any incident. Even her allegation, that 20 days after the marriage, the respondent had the occasion to disclose to her that the petitioner had affairs with another woman, is too vague for the purpose of establishing the instance of cruelty by raising unfounded allegation of illicit relationship of her husband with a woman, by the respondent/wife, P.M.6 Indranil Talapatra is the younger brother of the petitioner. He also deposed like his brother and sister regarding his impression about the respondent/wife. Same is the evidence of other two relations of the petitioner, namely, P.W.7 Rama Talapatra and P.W.8 Monaj Talapatra. P.W.9 Kinkar Bhattacharyya is the LIC. Agent. He has deposed that he came to know the petitioner when he was working as an Assistant in LIC, and he came to know the respondent after her marriage with the petitioner.

15. It is the further evidence of the witness that the respondent started spreading scandal against her husband about his relation with women. Here also we find that the witness has not stated when the respondent started spreading scandal against her husband and whether any specific woman has been implicated with the petitioner in spreading the scandal against her husband and whether any specific woman has been implicated with the petitioner in spreading the scandal. P.W.10 Bimal Ch. Talapatra is the father of the petitioner. According to him one and half months after the marriage of the parties he realised that there was serious differences between the petitioner and the respondent and this continued till 4th of June, 1992 up to the time respondent lived in his house. It is his further evidence

that he recorded his impression in his diaries regarding the relationship between the petitioner and the respondent.

16. In this way, we find that the petitioner in spite of examining 10 witnesses including himself has failed to establish any case of mental or physical torture by the respondent/wife. The father in his evidence has stated that he wrote down his impression in the diary, regarding the relationship between his son and his wife. He has not stated that he recorded the incidents of different dates and he did not depose about such incidents with the help of the writings in the diary.

17. From the petition filed by the husband initiating the matrimonial suit, we have already found that besides making various general allegations about the conduct of the wife to establish a case of cruelty, both mental and physical, the petitioner/husband in Para-9 of the petition also alleged that the respondent/wife had been suffering intermittently from mental disorder and the husband took her to Dr. Goutam Ghosh, Psychiatrist for a couple of time for the purpose of treatment. The wife ultimately refused to go to doctor for any further treatment. But the husband completely failed to lead any evidence to show that the wife/respondent, during the time when she was living with the husband in the matrimonial home, was suffering from any kind of mental illness. The doctor who according to the petition had the occasion to treat the respondent/wife for sometime has not been examined. No other evidence has been tendered from the side of the husband to establish such allegation.

18. The learned Judge of the Court below in his judgement, inspite of his noting that no positive medical evidence was produced before him by the petitioner to establish that allegation, has refused to answer the issue touching the question. We do not find any reason for that. On careful scrutiny of the judgement impugned we find that the learned Judge relied heavily on the different entries of the diary maintained by P.W.10, the father of the petitioner and the observation of Dr. S.S. Talukdar (Homoeopath) who was not examined in this case to come to an ultimate finding that the respondent/wife was guilty of practising cruelty, both physical and mental on the petitioner. In our considered opinion, the learned Judge has erred in coming to such a conclusion on entries of a diary. In this case, we have already

seen that father has been examined as P.W.10, we have already observed that the father of the petitioner could have refreshed, his memory by going through the different entries made in the diary in his handwriting and could have deposed about some specific incidents, as the instances of cruelty either physical or mental on the part of the respondent/wife. But that was not done. The father, as P.W.10 only stated that the entries in the diary were in his handwriting. In the absence of any pleading such entries of incidents recorded as impressions in the diary could not be the basis of a conclusion by any Court of Law. Similar is the case, regarding the extracts from the record book maintained by Dr. S.S. Talukdar (Homoeopathy doctor) in respect of the treatment of Smt. Uma Talapatra (Exhibit No. 4). The said doctor was not examined in this case, and without his testimony, Ext. 4 has little or no evidentiary value. The doctor is not a psychiatrist. It is not established that he is competent to treat mental patients.

19. This connection, it should also be pointed out that the respondent/wife, in all examined 5 witnesses including herself, other two witnesses are her brothers. They stated in their evidence that the respondent/wife was never kindly taken by the other members of the family of the petitioner as she was physically handicapped. According to the evidence of the respondent/wife from the beginning certain restrictions were imposed upon her by the members of the family and these continued even after the birth of the child. Question here is whether the petitioner/husband succeeded in establishing that there was either physical or mental cruelty or both in order to get a decree of divorce? We have already noted that the husband through the petition and the evidence made certain general allegations and in this way it can be said that there is no case of physical cruelty here.

20. The question therefore centres round whether any case of mental cruelty has been established from the total facts and circumstances of the case. It has been argued by the learned Counsel for the respondent/husband that it has come into evidence that the wife/appellant lodged FIR, on the basis of which police started a case under Section 498A and the other provisions of the IPC and in connection with that the husband and one of his relations were arrested by the police. It also came into evidence that the wife subsequently did not proceed with the

prosecution. It is submitted that in this background it can be said that the police case started by the wife had no foundation for which the wife did not proceed further and these facts alone can establish the case of cruelty on the part of the wife. Learned Counsel for the wife/appellant on the other hand has submitted that the appellant/wife had to start the case only for the purpose of getting the custody of her child from her husband and on getting the custody of the child with the help of the police the wife did not proceed further with the criminal case and herself urged the learned Magistrate to release the husband and his relation on bail.

21. In support of his contention that unfounded or unsubstantiated allegation raised in the FIR on the basis of which the husband/respondent was arrested by the police, itself would constitute cruelty on the part of the wife, the learned Counsel has referred the following cases:

(1) V. Bhagat v. D. Bhagat : AIR 1994 SC710 ,

(2) Vijoy Kumar Ramchandran Bhate v. Neela Vijay Kumar Bhate reported in : [2003]3SCR607 ,

(3) Sukhdev Kaur (Grewal) v. Ravinder Singh Grewal reported in 1996(2) CLJ 195.

22. In the first case (supra), the Hon'ble Supreme Court has observed that the mental cruelty in Section 13(1)(ia) must be of such a nature that the parties cannot reasonably be expected to live together and 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. In that case, the husband, a practising Advocate in Supreme Court, and High Court had filed a divorce petition against his wife on the ground of adultery. In her written statement and the question put by her Counsel to the petitioner. In cross-examination had made an allegations that the petitioner was a mental patient, that he was not a normal person, that he required phychological treatment to restore his mental health, that he was suffering from paranoid disorder and mental hallucination and that he and all the members of his family were a bunch of lunatics. In that background, the Hon'ble Court held that these allegations were not mere protestations of an injured wife; they were positive assertions of mental imbalance and streak of insanity in the mental build-up of the

husband. Making such allegations in the pleadings and putting such questions to the husband while he was in the witness box, was found to cause him intense mental pain and anguish besides affecting his career and professional prospects. So those assertions could not but constitute mental cruelty of such a nature that the husband could not be reasonably be asked to live with the respondent thereafter. In the second case (supra), the respondent/wife filed a petition under Section 13(1)(ia) of the Hindu Marriage Act seeking divorce on the ground of cruelty. The appellant/husband filed written statement making allegations extensively branding her as unchaste woman, keeping illicit relations, sexually and otherwise with a neighbour's son. However, subsequently the appellant/husband sought to withdraw those allegations by amendment of the written statement and such amendment was allowed. In that background, the Apex Court observed that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extramarital relationship constitute grave assault on the character, honour, reputation, status as well as the health of the wife. Those were of such quality, magnitude and consequence as to cause mental pain agony and suffering amounting to the reformulated concept of cruelty in the matrimonial law.

23. In the third case (supra), a Division Bench of this Court held that the filing of a criminal case even against the mother of the husband on unsubstantiated allegation that she was guilty of offence punishable under Sections 406, 403 and 420 IPC amounted to an act of cruelty on the part of the wife against the husband, inasmuch as the husband was sure to suffer mental pain and anguish to find his mother was made an accused in the criminal case on such type of allegations.

The learned Counsel for the appellant/wife on the other hand, has referred the case of:

- (1) S. Hanumantha Rao v. S. Ramani reported in : [1999]2SCR296 ,
- (2) Makhan Singh v. Gurmej Kaur, reported in 1 (1994) DMC 624,
- (3) Nivedita Banerjee v. Sanat Kumar Banerjee reported in 1999(2) CHN 625.

24. To resist such argument (supra) so far the case law cited in Item No. 3 (supra) it should be noted that the appellant/wife cannot get any benefit from such reported case as in that case a Division Bench of this Court clearly held that when a criminal case started by the wife ended in acquittal and when the wife tried further by filing a criminal revision case praying for conviction of the husband and ultimately failed, such act on the part of the wife amounted to cruelty. Regarding, Item No. 1 (supra) there was a representation made by the parents of the wife to Women Protection Cell for reconciliation of the estranged spouses. It was held that act did not amount to mental cruelty. We must pause for a moment to point out that in the reported case, the parents of the wife did not launch any criminal proceeding and did not cause any pain or anxiety in the mind of the husband by initiating any proceeding in which the husband might be arrested. Here they merely tried for a reconciliation of the estranged spouses and the Hon'ble Court found that those act could not amount to mental cruelty. Regarding the Item No. 2 (supra) it is to be pointed out that this is a decision of the Single Bench of different High Court and in this case also there is no clear indication that the criminal prosecution launch by the wife ended in acquittal of the husband and therefore the appellant/wife cannot be benefitted by such decision. On the other hand, it is well-settled now that launching of a criminal prosecution which is baseless and on the basis of which the husband was arrested undoubtedly amounted to cruelty. In this connection it should be pointed out that in order to make the case more serious, the wife made an allegation of a dowry demand, in her complaint. But no such allegation was made by the wife in the matrimonial suit that the husband and other members of his family, did not treat her well also because of dowry demand. This at least goes to indicate that the wife tried to raise certain allegations in the FIR which had no foundation at all and on the basis of the same the husband was arrested. It has been submitted that the wife had to take the recourse to initiate a criminal case only to get the custody of the child. But such argument is not at all acceptable. The wife if necessary could have filed an application for custody of the child before a competent Court of Law but in order to get the custody of the child she had no necessity to get the husband arrested in a criminal case with some false allegation.

25. Mental cruelty has not been defined anywhere in the Act. But through catena of judicial decisions, mental cruelty means that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for the injured party to live with the other. In this case, the wife launched prosecution against the husband, making certain allegations, some of these, have no foundation, and in connection with such prosecution husband was arrested from his house by the police.

Undoubtedly this caused immense pain and anguish to the husband and it is not expected that after that, the husband would forget everything and would start living with the wife.

26. In the result, we hold that the husband has successfully established mental cruelty due to filing of the criminal case in connection with which he was arrested and therefore the ultimate decision of the Trial Court should be affirmed.

27. In the result, the present appeal fails and it is dismissed. But having regard to the facts and circumstances we make no order as to cost.

M.H.S. Ansari, J.

I agree.