

Krishna Rani Vs Chuni Lal Gulati

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 1, 1981

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 107, 151

Evidence Act, 1872 â€” Section 114, 65, 67, 74, 77

Hindu Marriage Act, 1955 â€” Section 13

Citation: AIR 1981 P&H 119

Hon'ble Judges: D.S. Tewatia, J

Bench: Single Bench

Judgement

1. The couple though married as far back as on 10th June, 1959 and blessed with three children, appears not to have been able to make a success

of it. It was the appellant-wife Shmt. Krishna Rani (hereinafter referred to as the petitioner wife), who had in the first instance taken out divorce

proceedings in March, 1978 which came to be dismissed on 1st Sept., 1978 in default. It is there after Chuni Lal., husband (hereinafter referred to

as the respondent-husband) who took up the initiative by filing the present petition of 15th Nov., 1978 under S. 13 of the Hindu Marriage Act

seeking divorce on the ground of cruelty. It was alleged in the petition that the wife has been of a nagging type constantly insulting him even in the

presence of his friends, she had been neglecting the children for whom she would not cook meal in time, would frequently bear them and maintain

an atmosphere in the house which was constantly surcharged with tension; that she was self-willed to the extent that she would leave the house and

remain away for days without his permission. By way of illustration, it was mentioned that in Nov. 1977, she went away to Haridwar without his

permission and returned to the house after a week, giving an instance of insulting behavior it was mentioned that on 18th Jan., 1978. his friends Om

Prakash Chadha and Dr. Sanjay Sachdev visited his house. She declined to prepare tea for them, created a scene by beating the children with the

result the guests left the hose without taking tea, as a result he felt greatly insulted.

But what proved to be the proverbial ""last straw"" was an imputation against the husband of having illicit relations with Shmt. Parmeshwari, wife of

his elder brother made in report Ex P-1 that she had lodged against the husband on 6th Feb., 1978. On the basis of the said report, the husband

had been arrested and proceeded against under Ss. 107 and 151 of the Cr.P.C. The wife left the house on that day returning only to collect her

cloths and jewellery in the absence of the husband and thereafter has been staying away.

2. Wife, Shmt, Krishna Rani denied the allegation pertaining to the nagging and insulting behavior attributed to her. She has asserted that she had

been dutifully cooking the meals and looking after the children; that it was the husband who at the instance of his mother had been maltreating her

occasionally and gave beating to her. His beating assumed serious proportion on 6th Feb., 1978 which left her no alternative but to lodge a report

with the police. She alleged that the husband was a follower of Nirankari Nirankaris with water which he made her to drink, although she did not

believe in Nirankari Faith. On her refusal to do so, she used to be given beating.

3. Chuni Lal, husband, appearing as his own witness, deposed to the allegations mentioned in the petition stating that the attitude of the wife was

extremely arrogant, insulting and non-co-operative. She had been insulting him before his friends; that she had been neglecting to cook food for the

children, that she many times and sometimes for days together would not cook food for the family, would not prepare children for the school,

withheld motherly affection from them, with the result that he used to get them ready for the school and used to cook their meals at such times. Om

Prakash Chadha, P.W. 3, deposed to the fact that one day in Nov., 1977 he along with Dr. Sanjay Sechdev had visited the house of the husband.

She in their present refused to prepare tea, started beating the children and they thereafter left the house without tea. Harish, P.W. 4 son of the

parties corroborated the version given by Chuni Lal and Om Prakash Chadha. Dharam Singh, P.W. 5, who used to live in the house in front of the

house of Chuni Lal, stated that whenever he visited the house of Chuni Lal, he found that his wife would not speak to him. She used to retort even

on petty domestic affairs; that once he visited the house of Chuni Lal, he found that his wife was not present and had gone to Dehradun. He

noticed Chuni Lal several times dressing up the children for sending them to the school.

4. The learned trial Court accepted the version of the husband and granted the decree of divorce.

5. On behalf of wife Krishna Rani, the judgment of the Matrimonial Court has been assailed on the ground that not preparing tea for the friends of

the husband once or her going away to Haridar without his permission would not constitute cruelty and that in any case these lapses had been

condoned, Regarding imputation of adulterous relation of the husband with his elder brother's wife, it has been contended that besides the

testimony of the husband, there is no other admissible evidence to prove the said allegation Regarding the police report Ex. P-1, the stand taken is

that the said report is inadmissible in evidence as the same had not been duly proved in accordance with law and therefore, the trial court ought not

to have taken the same in to consideration. In the alternative, it was contended that the allegation contained in the report Ex. P-1 having not been

repeated by her evidence the said stray allegation in the police report in question would not constitute cruelty of the kind envisaged in Section 13 of

the Hindu Marriage Act. Regarding the proceedings under Ss. 107/151 of Cr. P.C. against the husband the position taken by the wife be clear

from the cross-examination of Chuni Lal husband, is that he was discharged because the proceedings had become more than six months old.

6. Respondent husband's allegations that the wife had been arrogant, had been frequently insulting him, had been neglecting the children and would

at times stay away from the house without his consent for days together and that she would insult the husband in the presence of his friends, have

been held by the trial court, and rightly in my opinion to be established from the evidence which is cogent and consistent and which carries the ring

of truth about it. The criticism of the testimony of the son that he deposed on account of being under the influence of his father, in my opinion is

totally unmerited. The answer that he had given in cross-examination lends credence to the impression that what he had spoken in his examination-

in-chief he did so out of a sense of truth and not due to pressure from any quarter.

7. The criticism of the other witnesses of the respondent-husband on the score of his friendship with them, in a case like this, would not be of any

avail, in that only friends and near-ones alone would have some knowledge of inter se relationship of the husband and the wife and the atmosphere

of the family. Nothing else has been shown which may cause any doubt about the reliability of these witnesses. In the circumstances, the trial court

has rightly placed reliance on the same

8. On the other hand petitioner wife's denial to the allegations in the petition in this regard rests on her own ipse dixit. The two witnesses that she

had examined had nothing to say about her conduct towards her husband and children. Girdhari Lal, R. W. 2, relation of petitioner wife merely

stated that when Krishan Rani, petitioner wife visited Mullanpur, she had many injuries on her person. On enquiry she had told him that her

husband had given her the injuries; that 12 years back also there was a quarrel between them and that he got the settlement effected. She is said to

have mentioned that her husband wanted his Nirankari guests to be served and wanted her to press their legs to which she did not agree and the

quarrel started because of that. Dr. Ashok Gupta R. W. 3, Medical Officer, General Hospital, Sector 16, Chandigarh deposed to the fact that on

6th Feb., 1978, he had examined Krishna Rani wife of Chuni Lal and found a contusion 2" x 2" in the lateral side of right forearm in the middle, a

contusion 2" x 2" on the palmar lateral aspect of left forearm just below a contusion 1" x 1" just below the right eye, a small lacerated wound of 1/2

cm. x 1/2 cm on the inner side of upper lip in the middle superficial laceration of 1 cm long on the lower lip, a contusion 2" x 2" over the scapula of

left shoulder, complained of pain on the anterior wall of abdomen left to middle just below umbilicus with slight tenderness present over the area

and contusion 1" x 2" just below the left on the anterior aspect. In cross-examination he admitted that the injuries in question would have been

received as a result of a fall from the stairs or as a result of a fall from the cycle on a metalled road.

9. Besides her own evidence, she has not examined any witness to say that her behaviour towards respondent husband was not insulting or

arrogant or that she had not been neglecting the children and that in fact she had been positively civil towards her husband and had been looking

after the children well and that she did not leave the house without her husband's consent for Haridwar.

10. The learned counsel for the petitioner wife argued that after she had returned from Haridwar where she had gone without the consent of the

husband and after the incident of disrespectful behaviour towards the husband when she refused to serve tea to the guests, she had been allowed

to stay in the house and continued to do so till 6th Feb., 1978. From this the Court must infer condonation of her acts and therefore, respondent

husband is not entitled to any relief. In support of his submission he cited Dr. N.G. Dastane Vs. Mrs. S. Dastane, .

11. The ratio of the decision relied upon would be attracted in my opinion a case where the relief is sought by pleading one particular instance

which amounts to matrimonial offence. If the Court finds that after the commission of such a misconduct by one spouse the spouse had forgiven

him or her and had restored her to the original position, then that would amount to condonation of the act, thus disentitling the offended spouse in

securing relief from the matrimonial Court. But where a continuing course of conduct on the part of a spouse, which tantamounts to causing mental

cruelty, is made the basis of relief sought from the matrimonial Court, then no condonation can be pleaded because the subsequent and the latest

act of cruelty would wipe out the effect of condonation of earlier acts of misconduct. Same would be the case where for instance one of the spouse

commits adultery, and that act is condoned, if he or she again commits an act of adultery and the offended spouse comes to the Court, the

condonation of the earlier act would not disentitle the offended spouse of the relief for the latter act of misconduct would wipe out the effect of

earlier condonation. I had the occasion to deal with such a contention in *Amrik Singh v. Smt Surjit Kaur* 1975 Cur LJ 360 and the observation

made therein are an apt answer to the contention advanced on behalf of the petitioner wife, which are reproduced below. :--

In the nature of things, neither it would be conducive for a married life nor it is thinkable that the moment a spouse commits an act which

constitutes cruelty, the other spouse rush to the court for relief. A normal married couple would naturally make allowance for difference of

temperament and allow time in order to stabilise the marital relation and would thus ignore the misbehaviour of the other spouse in the hope that

things would improve with the passage of time, where the mental cruelty is said to time. Where the mental cruelty is said to have been caused by

constant nagging, taunts, gestures full of disrespect towards the other spouse and towards those whom he or she either out of filial relationship or

friendship greatly respects, it is only when the misconduct of the other spouse does not show any sign of improvement and a stage is reached

where the last such taunt, nagging or gesture proves the proverbial "last straw" and the spouse throws up the sponge gives up the hose that time

would mend the matters and knocks at the doors of the Court.

12. The latest act of cruelty on the part of the petitioner wife that has been complained against by the respondent husband, is that of imputation of

carrying on illicit relationship with his elder brother's wife; that the respondent's husband forced her to take urine and night soil and that the

husband after going to the toilet used to come straight for taking his meals without washing his hands. These allegations were made in the report that

she had lodged with the police (Ex. P-1) on 6th Feb., 1978 and on that very day she had left the matrimonial house and had started pursuing

security proceedings against the respondent husband and also the divorce petition that she had filed against him and had never lived together

thereafter. All this is highlighted to show that there had been no occasion whatsoever for the condonation of her latest act of cruelty.

13. It has been urged on behalf of the petitioner wife that the report Ex. P-1 is inadmissible in evidence and once this piece of evidence is ruled out

on consideration, there would be no evidence available on the record in support of any such allegation. Document Ex. P-1 is claimed to be

inadmissible on the ground that it had not been duly proved in accordance with law, in that the scribe of the document has not been examined nor his

signatures or the signatures of the petitioner-wife who is said to have made the said report, have been proved. It has been forcefully contended that

mere exhibition of the document on the record would not make the document admissible if it had not been proved in accordance with law.

Reliance has been placed on the following observation of Ray J. Made in Sait Tarajee Khimchand and Others Vs. Yelamarti Satyam alias Satteyya

and Others, :--

The plaintiffs wanted to rely on Exhibits A-12 and A -13, the day book and the ledger respectively. The plaintiffs did not prove these

books. There is no reference to these books in the judgment. The mere marketing of an exhibits does not dispense with the proof of documents.

14. The aforesaid observations relied upon on behalf of the petitioner-wife were made in the context and circumstances of that case. It was

nobody's case there that when the documents were exhibited no objection to their admissibility had been raised. In fact in the latter part of para.

15 in which the above quoted observation appear, it has been observed that the defendants had impeached the plaintiffs books of account. The

fact that in the judgment no reference was made to those exhibits appears to show that admissibility of these documents had been objected to.

Since somehow these documents happen to be exhibited on the record the plaintiffs sought to take advantage of that fact.

15. In fact where a document is allowed to be exhibited and placed on the record and no objection is raised in the Court of first instance, then no

objection can be permitted to be raised regarding the admissibility of such a document merely on the score of mode of proof thereof. The following

observations of their Lordship of Privy Council made in Padman v. Hanwants AIR 1915 PC 111, can be quoted with advantage :--

It was urged in the course of the argument that a registered copy of the will of 1898 was admitted in evidence without sufficient foundation being

laid for its admission. No objection, however, appears to have been taken in the first appears to have been taken I the first court against the copy

obtained from the Registrar's office being put in evidence. Had such objection been made at the time, the District Judge who tried the case in the

first instance, would probably have seen that the deficiency was supplied. Their Lordships think that there is no substance in the present

contention.

16. What is more, the document in question is an F. I. R. recorded by a police officer in the discharge of his official duty and therefore, is a part of

the public record. Respondent husband had placed on the record certified copy of the F. I.R. He had also examined P.W. 1 Madan Mohan

constable who had brought the original record for the perusal of the Court and had shown the same to the Court. Illustration(e) of S. 114 of the

Indian Evidence Act which is in the following terms, permits the raising of a presumption that the official acts had been regularly performed:--

114(e) That judicial and official acts have been regularly performed

Section 79 of the Indian Evidence Act too permits the raising of a presumption as to the genuineness of the certified copies. In view of this it would

have to be taken that the police official who had recorded the F.I.R had done so in a regular manner in due performance of his duty. Clause (e) of

S. 65 of the Evidence Act, permits production of secondary evidence to prove the existence, condition or contents of an original document if the

same is a public document with in the meaning of S. 74 of the Evidence Act. The secondary evidence envisaged of such document is a certified

copy. S. 77 of the Evidence act provides that certified copies can be produced in proof of the contents of the public documents of which they

purport to be copies.

17. In Madamanchi Ramappa and Another Vs. Muthalur Bojjappa, , their Lordships have put a seal of authority on the assertion that if a

document is a certified copy of a public document, then the same need not have been proved by calling witness.

18. On behalf of petitioner-wife, however, reliance was placed on Hasta Ismail v. Emperor AIR 1937 Lah 593 and Miyana Hasan Abdulla and

Another Vs. State of Gujarat, for a contrary proposition that where any writing of a police officer who had recorded the F. I.R. has not been

proved in the manner provided by S. 67 of the Evidence Act, the document would be inadmissible in evidence to prove the truth of the facts

mentioned in such document. The ratio of these decision is not attracted to the circumstances of the present case. In those cases, the documents in

fact were pressed into service to establish the truth of the assertion made in the said document. But where what is sought to be done is only to

show that such and such allegation form content of a document and not that such allegation were in fact true then to prove the contents of a public

document certified copy of such a document is enough. Nothing more is to be required to make such a documents admissible in evidence.

19. For the reasons afore-mentioned, the contention advanced on behalf of the petitioner-wife that report Ex. P-1 is inadmissible in evidence, is

repelled.

20. It has been next argued on behalf of the petitioner-wife that a bare imputation of the kind mentioned in Ex P-1 would not constitute cruelty as

envisaged in the relevant [portion of S. 13 of the Hindu Marriage Act.

21. That the imputation of adulterous conduct constitutes cruelty of a type envisaged in S. 13 of the Act, is by now judicially well recognized.

Reliance has been placed on Amrik Singh P.C. S v. Smt. Surjit Kaur 1975 Cur LJ 360. Smt. Gayatri Devi Jain v. Dip Chand 1977 Hindu LR 425

and Jiwan Lata v. Krishan Kumar 1979 Hindu LR 599.

22. Their Lordships of the Supreme Court in Dr. N.G. Dastane Vs. Mrs. S. Dastane, have held inter alia that injury to reputation is of important

consideration in determining the question of cruelty. Their Lordships have also further held that wife's inflexible temperament of her taking delight in

causing misery to husband and his relations, constant menacing of the Peace and well-being of the household and nagging of the husband,

constitute cruelty.

23. In the present case, taking an overall picture of the conduct of the petitioner-wife towards the respondent-husband and the circumstances that

she launched security proceedings against the respondent-husband with certain allegation of maltreatment regarding which she led no evidence and

the respondent-husband was discharged, that she also took out divorce proceedings against the husband that court's efforts at reconciliation of the

parties in that case failed, but later on despite opportunities she did not adduce any evidence and allowed the suit to be dismissed in default, and

that these proceedings it would appear were attempted by way of harassment which without doubt must have caused mental torture to the

respondent husband it must be held that the respondent has established the factum of cruelty.

24. It has however, been argued on behalf of the petitioner-wife that the respondent-husband had caused her injuries on 6th February, 1978

regarding which she had lodged a report and as a result where of she had left the house the therefore, it is a case of mutual cruelty. Even it for

argument's sake, it is accepted that the injuries in question had been caused by the respondent-husband on 6th Feb., 1978, it would not make any

difference. If the respondent-husband had sought relief on the ground of desertion then, of course, this conduct on the part of the respondent-

husband could have been pleaded by showing that it was he who had given cause to the petitioner wife to leave the houses. Here the position is

entirely different.

25. It has been lastly contended that the refusal on the part of the petitioner wife to prepare tea on one occasion for the respondent-husband's

friends, would not constitute cruelty and in support of his submission reference has been made to Smt. Santosh v. Bharat Bhushan 1980 H LR 85.

There is no dispute with the proposition that a stray case of this kind by itself would not constitute mental cruelty of the kind, but the respondent-

husband case is that the petitioner wife has been arrogant, that her conduct has been constantly insulting towards him, that she had been neglecting

the children, that at times he used to cook meals for the children and he used to dress them up himself and that she used to leave the house without

his consent and used to remain away days together and that in her absence he had to cook the meals for the children and for himself and dress up

the children, besides the other allegation pertaining to the imputation of illicit relations with his brother's wife.

26. Mr. Gopi Chand learned Counsel for the petitioner-wife placed reliance on *Mst. Raj Kumari v. Ram Parkash Singal* (1968) 70 PNH LR 879

wherein allegation that she abused the husband and would at times not cook meals as a protest because he would send money to his aged parents

and an infirm brother, and had brought a tawiz into the house to create in him hatred for his parents, which are of more serious nature, were held

not to amount to cruelty. In My opinion this authority can be of no help to him. Sharma J. Clearly observed that there was no cogent evidence on

the record to prove those allegations and it was by the way observed that even if for the sake of argument it was to be considered that the facts

alleged by the husband were true then also the same would hardly furnish a good ground for granting a decree for judicial separation because the

same were clearly instances of conjugal life. What is more the concept of cruelty is undergoing a change as observed by Tiwana, J. In *Ashwani*

Kumar Sehgal v. Smt. Swatantar Sehgal. 1978 Cur LJ 443 and the View taken by Sharma J. appears to be on the conservative side which no

longer holds good.

27. For the reasons afore-mentioned, I entirely agree with the view taken by the matrimonial court below. Therefore, I find no merit in this appeal

and dismiss the same, but leave the parties to bear their own costs.

28. Appeal dismissed.