
(1998) 3 GLT 83

Gauhati High Court

Case No: First Appeal No. 82 of 1996

Sipra Das (Dey)

APPELLANT

Vs

Rana Pratap Das

RESPONDENT

Date of Decision: April 24, 1998

Acts Referred:

Evidence Act, 1872 & Section 134#Penal Code, 1860 (IPC) & Section 120B, 384, 498A, 506

Citation: (1998) 3 GLT 83

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

Bench: Division Bench

Advocate: B. Choudhury, for the Appellant; J.M. Choudhury and M.K. Choudhury, for the Respondent

Judgement

V.D. Gyani, J.

This first appeal arises out of the judgment and order dated 23.7.96 passed by the Principal Judge, Family Court, Kamrup

at Guwahati in F.C. (Civil) No. 125/92, decreeing the suit of the Appellant and dissolving the marriage with the Respondent husband with an order

to pay permanent alimony amounting to Rs. 60,000/- to the Appellant.

Few basic facts may now be noted.

2. This appeal was listed before us on 13.11.97. The Respondent husband is facing criminal trial and despite framing of charge as back as on

1.11.93 the Trial Court not proceed for want of record which was requisitioned in haste, and even after dismissal of the suit by the Family Court,

was retained delaying the progress of the criminal trial pending against the Respondent husband u/s 498A/384/506/120B IPC registered as

Jalukbari P.S. Case No. 375/92. The Respondent husband filed a suit for divorce on the ground of desertion, cruelty and suspected adultery. The

factum of marriage is not in dispute. The parties were married on 21st January, 1991. They lived as husband and wife at Kamakhya Colony within

the jurisdiction of Jalukbari Police Station. The Respondent husband alleged that his wife, the present Appellant deserted him on 18.3.91. She

used to behave very roughly with him as well as his mother. His attempts to bring her back and restore conjugal harmony failed to yield any result.

It was also alleged that the Appellant was carrying an illicit affair with two unknown persons. On 18.6.91 she got herself aborted for which the

Respondent husband was coerced to sign a consent letter. After abortion she left for her father's house from the Maligaon Central Hospital. The

Respondent was intimidated and threatened with dire consequences. He was beaten up by the hired goons employed by the Appellant when he

went to fetch her.

3. Appellant's case, on the other hand, was that soon after the marriage she was asked to bring Rs. 20,000/- from her father who is a retired

employee. As she failed to comply with his demand she was physically tortured and treated even in an inhuman manner. Even while she was

pregnant, she was kicked by the Respondent husband which resulted in profuse bleeding and ultimate miscarriage, she had to be hospitalised. She

was made to fetch water from the foot hill even during her pregnancy and was confined and starved for days on. The mother of the Respondent

also joined him in torturing the Appellant.

4. On the basis of the pleadings of the parties the following issues were framed:

1. Whether there is any cause of action?

2. Whether the Respondent had deserted the company of the Petitioner without just ground?

3. Whether the Petitioner criminally assaulted the Respondent and compelled her to live separately?

4. Whether the Petitioner is entitled to the decree of divorce?

5. Whether the parties are entitled to get any relief?

5. The trial Court passed a decree for dissolution of marriage on condition that the Respondent husband pay Rs. 60,000/- as permanent alimony

within one month. In compliance of order dated 13.11.97 an amount of Rs. 20,000/- have been deposited with the Registry as per application

dated 17.11.97. Learned Counsel appearing for the Appellant submitted that the impugned judgment is perverse, there is absolutely no

appreciation of evidence and the trial Court has merely gone by its own ipse dixit. No ground is made out for the relief granted to the Respondent

husband. It was also urged that it is the Appellant wife, in face of the overwhelming evidence on record who was entitled to the relief of separate

residence and maintenance.

6. Learned Counsel appearing for the Respondent husband, on the other hand, maintained that the impugned judgment is well supported by

evidence on record and does not call for any interference.

7. Before dealing with the rival contention as advanced at the Bar, a mere glance at the impugned judgment would go to show that it is nothing but

narration of pleaded case and virtually ad-verbatim reproduction of the statement of the witnesses examined by the parties. The concluding part is

to be found in the last paragraph and the discussion relating to Issues No. 2 and 3 at page 21-22. It would thus be seen that in arriving at the

conclusion of desertion the learned trial Judge has merely gone by the number of witnesses ignoring the quality of evidence. It is not the number of

witnesses but the quality of evidence which matters. A-mere reading of Section 134 of the Evidence Act would have convinced the learned Judge

of the simple proposition of law. There is absolutely no appreciation of evidence done by the trial Court. While referring to the statements of

witnesses Smt. Dhanada Athporia, Smti. Kamala Das and Smt. Pramila Das and Smti. Pratima Ray Choudhury, the learned Judge have simply

referred to the fact that they have blamed the Respondent, i.e. the Respondent before the trial Court (Appellant herein). This approach on the part

of the learned Judge of the Family Court is perilously bordering on perversity.

8. A mere reference to the names of witnesses as already noted above without least attempted appreciation of their evidence hardly justified the

finding arrived at by the learned Judge. Simply because 3 or 4 women have blamed the Appellant, no Court can come to the conclusion of

desertion on the part of the Appellant. P.W.3 Smti. Athporia is a neighbour of the Respondent husband, whom she treated as her brother. She

does not speak a word about desertion. Her evidence relates to visit by some stranger along with her (Appellant's brother-in-law). But even the

trial Court has not found either adultery or cruelty to have been proved. Similarly P. W. 4 Smti. Kamala speaks of daily quarrel which used to take

place between the husband and wife and according to her this quarrel is routine affairs. She does not know the reasons behind such quarrels. She

claims to have seen the Appellant sitting on a cot in the house while some strangers were there in the room. In her cross-examination she has

admitted that it was Appellant's brother in-law. There is no substantial difference between the case of a man who intends to cease cohabitation

and leaves his wife, and the case of a man who compels his wife by his conduct, with the same intention, to leave him. This is the doctrine of

constructive desertion. Halsbury's Laws of England, 3rd Vol. 12 P. 246.

9. The Supreme Court in Sanat Kumar Agarwal Vs. Smt. Nandini Agarwal, has pointed out that the question of desertion is a matter of inference

to be drawn from the facts and circumstances of each case and those facts have to be viewed as to the purpose which is revealed by those facts or

by conduct and expression of intention, both anterior and subsequent to the actual act of separation.

10. Viewed from the above angle, how can it be said that the Appellant wife who is kicked by the Respondent husband while in advance stage of

pregnancy resulting in profuse bleeding and eventual miscarriage, if in such condition, she straightway went to her paternal home from the hospital,

by no stretch of imagination can it be said that she deserted her husband.

11. The impugned judgment, is perverse, and liable to be set aside, it is accordingly set aside. The appeal is allowed with cost, counsel fee Rs.

2,000/-.