

**(1989) 07 CAL CK 0002****Calcutta High Court****Case No:** A.F.O. Decree No. 197 of 1986

Chinmoy Chakraborty

APPELLANT

Vs

Bharati Chakraborty

RESPONDENT

**Date of Decision:** July 19, 1989**Acts Referred:**

- Hindu Marriage Act, 1955 - Section 13(1)

**Citation:** (1989) 2 CALLT 414 : (1990) 1 DMC 391**Hon'ble Judges:** Siba Prasad Rajkhowa, J; Monoranjan Mallick, J**Bench:** Division Bench**Advocate:** Karuna Sankar Roy, Aloke Chakraborty, Udayan Chakraborty and Anjan Chakraborty, for the Appellant; Samaresh Banerjee and Swapna Kumar Kar, for the Respondent**Final Decision:** Dismissed**Judgement**

Monroanjan Mallick, J.

This is an appeal filed by the petitioner husband being aggrieved by the Judgment and Decree passed by the Additional District Judge, 14th Court, Alipore dated 19th December 1985 dismissing the petitioner-appellant's suit for divorce u/s 13 of the Hindu Marriage Act. The petitioner husband has brought the Matrimonial action of divorce against the respondent wife stating the following facts.

The petitioner was married to the respondent in accordance with Hindu religious rites on 24-2-1980 at 1B, Rajpur East Road, Calcutta-32, P.S. Jadavpur. He is an M.Sc. of Calcutta University and has been working as an Assistant in Indian Bank. He is a Table player and connected with All India Radio from the childhood. He is also a good sportsman and has good number of friends and acquaintances from amongst his colleagues and co-artists. The respondent appears to be eccentric and a patient of schizophrenia having lucid intervals. On the occasion of "Baubhat" ceremony she demonstrated the state of her mental imbalance. The appellant's case was that a

good number of the petitioner's friends came to greet the newly married couple. In particular they desired to facilitate the respondent and after their respective presentations to her, unfortunately to every one's dismay she began shouting pointing to the petitioner "Tomar Bandhugiri Ghucheye Dichhi". The petitioner was put to great shame and ignominy because of such unusual behaviour of the respondent. Since that time onwards, the respondent has treated the petitioner with utmost cruelty (physical and mental). She assaulted the petitioner on several days with fists and blows and even threatened him with death.

2. She also treated the petitioner's parents most inhumanly and persistently demanded that the petitioner must shift to her paternal house with her which demand was absurd and the respondent's re-action to the petitioner's unwillingness to abandon his paternal home which was also the respondent's matrimonial house, was horrible. In fact she lost her head and created a scene to continue for days.

3. On many occasions she left matrimonial house with a servant of the petitioner's neighbour without obtaining permission from elders and after much persuasion she could be brought back. The defendant hurled abusive languages to his parents.

4. Although the respondent has been suffering from mental illness and psychopathic disorder but there is method in her madness. The petitioner and her parents offered to treat her by experts but she vehemently resisted. On repeated occasions the respondent threatened the petitioner with the words "I shall commit suicide". Even when the petitioner went to talk to the parents of the respondent about the problem she would tell that the petitioner was a dog licking her feet.

5. The respondent repeatedly used to shout, cry aloud and start singing at the top of her voice at odd hours. She habitually told many of the petitioner's friends that she would divorce her husband. On 9-2-1981 the fateful Saraswati Puja day the respondent began to shout and assaulted the petitioner violently and but for the intervention of the petitioner's uncle and other relatives of the house he would have been killed on that day.

6. The respondent left the matrimonial house on 11-2-1981 and told the parents of the petitioner that if any attempts were made to her to doctor or keep any contact with her, her dead body would only be found and from that date she stopped putting vermillion and told many of her friends that she had divorced her husband.

7. The petitioner did not condone her cruelty. He only tried to get her treated for he was convinced that it was a mental case. He treated the petitioner with affection and care and parents of the petitioner too were very sympathetic towards her but those efforts were fruitless.

8. In the circumstances, it is impossible for the petitioner to live with the respondent.

8A. So, he prays for divorce both on the ground of mental disorder and cruelty.

9. The respondent has contested the suit by filing written statement denying all the material allegations made in the petition. She claims that she was/is never an accentric or a lunatic nor a patient of schizophrenia. She denies that she behaved abnormally on the Baubhat ceremony day as alleged in the petition. She also denies that she ever inflicted on her husband any sort of cruelty. She also denies that she misbehaved with her parents-in-law or that abused any one of them with filthy language. But her case is that the petitioner's mother insulted her on many occasions because she could not bring adequate dowry, that she was driven out of her matrimonial house on 12-2-1981 by keeping back all her ornaments and jwellaries and key of the lockers and that the petitioner by a letter dated 14-2-1981 intimated the Bank not to allow the respondent to operate the locker.

10. In the circumstances, the respondent prays that as no ground for divorce has been made out in the petition the suit is liable to be dismissed. The learned trial Judge on considering the evidence adduced by both the parties, has come to the following conclusions, namely, (1) The petitioner has failed to prove his case that the respondent is a patient of intermittent schizophrenia and psychopathic disorder and (2) the case of cruelty has not been proved. In the result, he has dismissed the suit refusing the petitioner the decree for dissolution of marriage.

11. Being aggrieved the petitioner has preferred this appeal.

11A. Before us the appellant has urged the following points; Firstly, the learned trial Judge did not properly appreciate evidence adduced by the petitioner for dissolution of marriage on the ground of mental disorder and has very cursorily disposed of the said ground for divorce without appreciating the evidence fully and without considering the effect of the abnormalities of the behaviour of the respondent on the mind of the petitioner and has erroneously held that the petitioner has failed to prove this ground of divorce.

12. Secondly, the petitioner has adduced clear and satisfactory evidence of both physical and mental cruelty meted out to the petitioner by the respondent and has also clearly proved that the total effect of such acts of such cruel acts of the respondent is that it is impossible for the petitioner to live with the respondent in the matrimonial home.

13. During hearing an application under Order 41 Rule 27 of the C.P. Code has been filed by the appellant praying for leave to grant him opportunity to adduce further evidence as he seeks divorce on the ground of irretrievable break down of marriage and has alleged certain facts to support his case and has sought for leave to prove the same.

14. The Respondent has contested the appeal and has fully supported the findings of the learned trial Judge.

15. As to the prayer for leave to produce additional evidence in support of the case that marriage has been broken down irretrievably the Respondent urges that the appellant cannot be permitted to adduce such evidence as the irretrievable break down of marriage is no ground for divorce under the Hindu Marriage Act and the appellant cannot get any decree on that ground if he fails to get the decree on any of the grounds alleged. It is further contended that the respondent has clearly stated in his evidence that she is ready and willing to go back to her husband to live with him and that it is the appellant who is refusing to take her back and that the present matrimonial proceeding was initiated within one year of the marriage and there is no question of the marriage having broken down.

16. Before proceeding with the merits of the appeal we would first dispose of the appellant's petition under Order 41 Rule 27 of the C.P. Code.

17. The appellant seeks to adduce additional evidence to prove that the marriage has irretrievably broken down and has stated certain facts to support that case. In support, the Supreme Court decision reported in Smt. Saroj Rani Vs. Sudarshan Kumar Chadha, has been cited and it is urged that even though irretrievable break down of marriage is no ground for divorce, the Supreme Court has approved the decree of divorce in the above decision on being satisfied that the marriage between the parties has broken down irretrievably. On behalf of the appellant, it is urged that in this case also there is much scope for considering as to whether the marriage has been broken down irretrievably or not and consequently the appellant may be given the chance to produce such evidence to prove the same. We are of the view that when the irretrievable break down of marriage is no ground for divorce under the Hindu Marriage Act, the appellant should not be permitted to lead additional evidence to prove that case.

18. On carefully considering the decision of the Supreme Court referred to in the above we are of the view that the Supreme Court having observed that ground of divorce pleaded in the suit has been clearly proved has affirmed the said decree for divorce also on being satisfied regard being had to the peculiar facts of the case that the marriage has irretrievably been broken down. The facts of this case are entirely different. In this case, within one year of the marriage, this matrimonial proceeding has been initiated and as because the proceeding is pending for 7 or 8 years the couple are living apart. The Respondent has in his evidence stated that she is willing to go back to her husband's house.

19. We have also attempted re-conciliation. Before us also the respondent unequivocally expressed herself to go back to her husband but the appellant showed his adamant attitude and refused to take her back.

20. In the circumstances, it is not a fit case in which the appellant's application for leave to adduce additional evidence should be allowed. The application is, therefore, dismissed.

21. The first question to decide in this appeal is whether the appellant is entitled to get the decree for divorce u/s 13(1)(iii) of the Hindu Marriage Act.

22. The Section 13(1)(iii) is extracted as follows :

"13(1)--Any marriage solemnised whether before or after the commencement of this Act, may, on a petition by either the husband or the wife be dissolved by a decree of divorce on the ground that the other party--

xx

xx

xx

xx

(iii) has been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder of such a kind and of such an extent that the petitioner cannot reasonably be expected to live with the respondent,

Explanation : In this clause--

(a) expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other kind of disorder or disability of mind and schizophrenia,

(b) expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other, and whether or not it requires or is susceptible to medical treatment".

xx

xx

xx

xx

23. Mr. Karuna Sankar Roy, the learned Advocate appearing for the appellant has strenuously urged before us that even though the appellant had stated that the respondent wife was suffering from schizophrenia, that was nothing but a loose term used, that the evidence that has been adduced by the petitioner before the learned trial Judge clearly revealed that the respondent was suffering psychopathic disorder which is a kind of mental disorder within the clause (iii) and as the respondent is suffering from such disorder the appellant-petitioner is entitled to obtain divorce under clause (iii) of Section 13(1) of the Hindu Marriage Act. He has further submitted that the psychopathic disorder is such an abnormality of mind which may or may not require medical treatment, that it is such a disorder which results in abnormally aggressive or seriously irresponsible conduct and that the evidence clearly revealed that the Respondent showed clear signs of such abnormally aggressive and seriously irresponsible conduct and consequently the learned trial Judge without going into this ground of divorce with all seriousness dismissed it on the ground that the petitioner appellant failed to prove that the respondent was suffering from mental illness. Mr. Roy has before us highlighted the following abnormal conditions of the respondent--

(1) On ceremonial Bhowbhat ceremony when the close friends of the petitioner went to her to give her presents she behaved harshly and when the petitioner came with his friends she also behaved abnormally and shouted "Tomar Bandhugiri Ghucheye Dichhi".

(2) On being requested by the in-laws the respondent refused to meet Byomkesh, the cousin of petitioner.

(3) Respondent refused to meet Sovan an intimate friend of the petitioner and his newly married wife.

(4) The respondent on several occasions held out threat to commit suicide.

24. On behalf of the respondent it is urged that in order to obtain divorce u/s 13(1)(iii) of the Hindu Marriage Act, the petitioner appellant has not only to prove that the respondent has been suffering from mental disorder but also to prove that the petitioner cannot reasonably be expected to live with the respondent. He also submits that the petitioner's learned Advocate has in his argument sought to introduce certain incidents which the petitioner himself did not state in the plaint or in evidence as instances of mental illness and that the incidents of alleged abnormalities which have all been disputed by the respondent do not justify the inference that the respondent was suffering from any mental disorder and that over and above the petitioner neither in the plaint nor in evidence made any whisper that the alleged mental disorder of the respondent was of a such kind and to such an extent that it was not possible for him to live with the respondent. On analysing the plaint we find that in paras 9 to 13 the petitioner gave certain instances of mental illness of the respondent. But no where in the plaint he has stated that the alleged mental disorder was of such a nature and to such an extent that it was impossible for him to live with the respondent.

25. On considering the evidence of the petitioner also we are of the view that the petitioner did not specifically state in the evidence that the mental illness of the respondent was of such a kind and to such an extent that it was impossible for him to live with the respondent. In examination-in-chief he referred to the incident of the Bhowbhat ceremony when the respondent is alleged to have made certain outburst of temper and he stated the conduct of the respondent to be abnormal. Immediately after such evidence he has given several instances of alleged cruel acts of the respondent.

26. Other acts of abnormality are, pushing the petitioner, using rough words, reluctant to meet the causon of the petitioner and using filthy words to the parents-in-law. But he did not include the incident of Saraswati Puja might as an abnormal conduct but his learned Advocate before us also wants to project that incident also, i.e., the showing of violent temper and attack on the petitioner with the scissors to be an abnormal conduct.

27. However, it is in evidence that the petitioner did not take any step to get her medically examined to show whether she was suffering from any sort of mental disorder or psychopathic disorder. The petitioner has however stated that he attempted but he was resisted with the threat to commit suicide.

28. On considering the evidence adduced by the petitioner and his witnesses regarding the incidents abnormal behaviour of the respondent and on hearing submissions made by the learned Advocate for both the aides, we are of the view that even if those are taken on their face value they may at best be instances of eccentricities of the respondent but these would not prove that she has been suffering from psychopathic disorder or any other kind of mental disorder. However, we do not wish to discuss the incidents in details while deciding the point in issue, because we have to dismiss this ground of divorce on the ground that the petitioner did not make out any case that the alleged mental disorder of the respondent is of such a kind and of such an extent that it was impossible for him to live with the respondent.

29. It would be futile exercise to discuss in details alleged incidents referred to by the learned Advocate to the appellant as the incidents showing the psychopathic order of the respondent because in this case there is absolutely no evidence that the alleged abnormalities were such as to make the petitioner impossible to live with the respondent. On the contrary, there is evidence that the respondent was pursuing her higher studies in Jadavpur University while staying in her in-laws house and she was regularly prosecuting her studies in the home also. So even if the incidents were true the respondent was continuing with her normal avocation of life by living in her father-in-law's house and that too till the middle of February 1981.

30. In a recent decision the Supreme Court in Ram Narain Gupta Vs. Rameshwari Gupta, has observed that for obtaining divorce on the ground of mental disorder the petitioner has not only to prove that the respondent wife was suffering from mental disorder but also it must be proved that the petitioning spouse cannot reasonably be expected to live with the other. In that case, the appellant husband filed a suit for divorce that the wife was suffering from schizophrenia and proved the same by producing medical evidence. The trial Judge decreed the suit for divorce u/s 13(1)(iii) of the Hindu Marriage Act. The High Court in appeal set aside the said decree on the finding that even though the petitioner husband had proved that the respondent wife was a patient of schizophrenia but the petitioner failed to adduce any evidence that could prove beyond reasonable doubt that the mental disorder of the defendant was of such a kind and such a nature that the plaintiff cannot live safely with the defendant. The Supreme Court in appeal by way of special leave baa approved this finding of the High Court and has referred to several recent Medical authorities on the mental illness and has noted that it is not correct to describe any mental patient with any brand of disease Ventakachalliah, J. of the Supreme Court who delivered the judgment has finally concluded by observing that schizophrenia is

what schizophrenia does. So the effect of the mental illness on the petitioning spouse is a necessary ingredient to grant divorce on the ground specified in Section 13(1)(iii). The Supreme Court in that decision relied on the Division Bench of the Calcutta High Court in Smt. Rita Roy Vs. Sitesh Chandra Bhadra Roy, where it has been held that the petitioner has to prove two elements in order to obtain the decree for divorce u/s 13(1)(iii) of the Hindu Marriage Act; firstly, the party concerned must be of unsound mind or intermittently suffering from schizophrenia or mental disorder and secondly, that the disease must be of such kind and of such an extent that the other party cannot reasonably be expected to live with that party.

31. In this case also, we are of the view that there is no evidence whatsoever that the alleged mental illness of the respondent which the learned Advocate for the appellant wants to brand as psychopathic disorder is of such a nature and of such extent as it is impossible for the petitioner to live with the respondent. In the result we hold that the learned Trial Judge has rightly rejected the decree of divorce u/s 13(1)(iii) of the Hindu Marriage Act.

32. Second ground on which the petitioner/appellant has prayed for divorce is the ground of cruelty. In the plaint he has alleged about several acts of cruelty, both physical and mental, meted out to him by the respondent during her stay in the matrimonial home and he has stated finally that it is impossible for him to live with the respondent if the matrimonial tie is to continue. In examination-in-chief, the petitioner Chinmoy Chakraborty as PW 1 has made some general allegations regarding the acts of cruelty. A portion of his evidence-in-chief are reproduced hereinbelow : "I was subjected to cruelty, both physical and mental by the respondent. Whenever I used to talk with her regarding the members of my family, she used to push me. She also behaved harshly with me."

"Respondent used to complain to me about the conduct of my parents while I was away in office, to my kind that was impossible. When I used to dispute in it, she used to flew away and pushed me". "On the night of Saraswati Puja in 1981, the respondent subjected to me to enormous torture. The whole day she spent in Post Graduate Institution and in the evening she came back. Inspite of my request she refused to go out with me. But about 9 a.m. she agreed. She did not take her meal, I went upstairs she became furious, snatched away the radio set from me and chased me with a scissors. My parents had noticed. I called my Jhatamasai, namely, Prof. Lokesh Chakraborty and he came and prevailed upon the respondent to coo] down. The matter was cool to some extent and they left".

33. After narrating the above acts of cruelty the petitioner stated that the respondent left her matrimonial home for good on 11-2-81. After the above evidence the petitioner has stated that it is now impossible for him to live with her as husband and wife because of physical and mental cruelty, meted out to him by her and has stated that he had noticed since boubhat day that the respondent could not tolerate his parents, his relatives and friends, and even his effort to have a

reconciliation bore no fruit. In other portions of the examination-in-chief, the petitioner also narrated some other incidents. The first such incident was that of the ceremony of Boubhat night where the respondent is alleged to have abused the petitioner in front of his friends. The petitioner has observed that he found such conduct of the respondent to be abnormal. He has also mentioned in his evidence-in-chief about the abnormal behaviour such as not meeting the cousin brother when calling on them in their house on the plea that they are not V.I.Ps. He has also mentioned that frequently the respondent used to leave the matrimonial home and go to her father's house without any consent and/or information of him and used to stay there without any consent and information on him. He has also mentioned that even during her illness when he offered him Horlicks as a drink she vehemently refused it. She also refused to be treated by the expert suggested by the family doctor. He has also stated that the respondent suggested to him to leave his paternal house to go to live with the parents-in-law and when he refused she flared up. He has also further stated that she frequently threatened to commit suicide. In the cross-examination he has been obliged to concede that as regards the alleged acts of cruelty which are related in the examination-in-chief, he could remember in particular about the two incidents. Even though he has stated in cross-examination dated 29-9-83 that the respondent physically tortured him on 10 occasions but he could remember of incidents only of two days. Those days were 18-7-80 and 9-2-81. The incident regarding 18-7-1980 is the alleged incident pushing him down and giving one or two blows. He also mentioned that his father was aware of this incident as this happened in his presence. The incident dated 9-2-81 is the alleged incident of the respondent attempting to strike him with scissors.

34. From the analysis of the above evidence there could not nodoubt that even though he states about ten incidents of physical acts of cruelty of the respondent but even in 1983 he could remember only two incidents. Regarding the incident dated 18-7-1980 there is no whisper in in the petition of divorce. In the examination-in-chief also he does not specifically mention about that incident. He states that his father was present when the incident dated 18-7-80 took place but his father PW 5 Kali Pada Chakraborty has in his evidence did not mention about the said incident of assault. The only incident of which Mr. Chakraborty appears to have personal knowledge is the incident that took place on the Saraswati Puja night. Kali Pada Chakraborty in his cross-examination has admitted that regards the alleged cruelties which he mentioned in examination-in-chief he was only present at the time when the incident of Saraswati Puja took place. As regards the other acts of the respondent to which he appear to have personal knowledge could not be held to be the acts of cruelty of a wife to the husband. From a perusal of the Kali Pada's evidence it appears that the respondent was not pulling on well with the family of the parents-in-law. She also appears to be behaving in a manner which a daughter-in-law would not normally behave. The main evidence of the alleged cruel acts nodoubt is of the petitioner himself. But we have already indicated that be

mentions in the cross-examination about two physical acts of cruelty. But as regards the alleged act dated 18-7-80 we have serious doubt about its veracity. We have already indicated that according to him the incident took place in presence of his father but his father has not stated in his evidence that on that date the respondent assaulted the petitioner with fists and blows. Kali Pada Chakraborty in his evidence has stated that on that date the respondent who was suffering from influenza was in nasty mood. But he does not state that he had seen daughter-in-law assaulting his son. Therefore, the incident of alleged assault on 18-7-80 appears to be not a true story. Regarding the other incident of alleged physical assault, that is, on the night of Saraswati Puja, we are of the view that there was really some incident on that night. But as whether really on that night, the respondent attempted to assault the petitioner with the scissors appears to be very much doubtful. Because even though the petitioner and Kali Pada Chakraborty mention on that night that at about 9 p.m. when his son refused to take the respondent to Puja Pandals at that unusual time she flew into a raze, abused his son and whipped out a scissor to assault him and had he not intervened his son would have been done away with, the petitioner has in his evidence stated that when the alleged attempt was made, the petitioner was alone in the room and he called out his parents and his Jathamasai and they rushed to his room. Therefore, the evidence of Kali Pada Chakraborty that the incident of attempting to assault the petitioner with the scissors was made in his presence does not appear to be a true story because the petitioner himself says that his parents came to his room on hearing his shouts. Lokesh Chandra Chakraborty, does not make any whisper about the incident of any attempt of assault by the respondent with the scissors of that night. His evidence is that on Saraswati Puja night at about 9/9-30 p.m. he heard the yell of his nephew that he was about to be done away and on going to the room of Chinmoy he saw Chinmoy, his wife and his parents and his sister, that his younger brother Kali Pada was goading his son's wife to calm down and on his asking Kalipada told him that in the midst of a domestic tiff the Respondent Bharati attempted to assault his son Chinmoy. He further stated that he tried his best to pacify the respondent but she was harping on the same tune again and again by saying that she would leave the house immediately but he tried to prevail upon her by reasoning with her that it was not proper to leave the house at that hour of night and that the Respondent came to her senses and agreed. The incident of Saraswati Puja night has also been related by PW 3 Smt. Leena Banerji, a married sister of the petitioner Chinmoy. She states that on that night he heard a cry from upstair and having gone there saw that the respondent was in nasty mood and was about to assault her brother being armed with scissor. We are of the view that the incident was the result of a domestic tiff between the husband and wife and the petitioner wants to highlight it as a serious incident of a physical assault by the wife against the husband. Regarding the incidents of cruelty apart from the evidence of the petitioner, his father Kalipada Chakraborty and his married sister Leena Banerjee the petitioner has examined his close friend Shyamal Roy. Shyamal Roy has in his evidence stated that he had heard from his friend about

the physical acts of cruelty perpetrated by the respondents to him and the petitioner had also shown him the marks of assault by the respondent. We find such evidence to be absolutely untrue. The petitioner never stated in his evidence that he stated to his friend about the assault made by his wife nor has he stated in his evidence that he had shown any mark of the injury on his body to any of his friends.

35. We have carefully gone through the alleged evidence of physical acts of cruelty as stated by the petitioner by his own evidence and by the evidence of his witnesses and we are of the view that the petitioner appears to be exaggerating the things to a great incident. The evidence that has been adduced would, however, indicate that the Respondent's behaviour in her father-in-laws house was not as was expected by her parents-in-law or even by her husband and other relatives. Some of the incidents would show that the respondent was not behaving normally. The petitioner has also stated in his evidence that he intimated his parents-in-law regarding those incidents and they had informed that these things would pass off with the passage of time. The Respondent was in the Matrimonial home only for a few months. The petitioner admits that since the end of July 1980 the respondent was frequently leaving the matrimonial home and going to his father's house and he had to persuade her to bring her back and sometimes he was also abused. We are of the view that the respondent was not behaving in a normal manner in her matrimonial home but her abnormalities were not at all a case of mental disorder which case we have already disbelieved but also her acts were not such acts of cruelty as would justify the dissolution of the marriage on that ground.

36. On behalf of the petitioner much arguments have been made that the Respondent on several occasions held out the threats of committing suicide. This according to the petitioner's learned Advocate also contributed to mental cruelty of the Respondent. On behalf of the petitioner it is also urged that the petitioner offer abused her parents-in-law which also amounted to mental cruelty. We are of the view that for a wife during quarrels and in course of domestic tiff it is not uncommon to hold out such threats of committing suicide. That those threats were not serious is borne out from the fact that never any attempt was made by the respondent to commit suicide. So it was nothing but an outburst of a wife during domestic tiffs with the husband or with the parents-in-law. Regarding the alleged misbehaviour and abuse of parent-in-law by the Respondent the respondent has seriously denied it. The main evidence of the petitioner in this respect is that his parents were branded a hypocrites and not true of disciples of Ram Thakur. Naturally if such view is expressed of the parents-in-law by the daughter-in-law the parents-in-law and the husband would definitely have grievance against the respondent but the petitioner husband has stated that it was the mother "if the respondent who hurled such abuses and his wife supported her mother. Therefore, it is not a case in which the daughter-in-law hurling any abuse to the parents-in-law. However, such hurling of abuses are not uncommon when the relationship between the daughter-in-law and parents-in-law becomes strained. But such incident would

not in my opinion amount to such mental cruelty of the petitioner to justify the dissolution of the marriage.

37. The Respondent has examined herself. Her mother has been examined on commission and her father also has been examined. The mother in her evidence states that her daughter used to complain against his mother-in-law that she used to ill treat her as they could not give her adequate dowry. She however, has hot complained against the father-in law of his daughter, Kali Pada Chakraborty, who according to her behaved well with the daughter-in-law. The Respondent has also stated in her evidence that she tried to behave well with her husband, her father-in-law and mother-in-law but her mother-in law did not behave with her properly and used to illtreat her. She has not complained against her father-in-law. The father of the Respondent has also been examined. He has denied that his daughter used to come to his house without the permission of her husband, and parents-in-law. He has stated that the Respondent reported to him that her parents-in-law particularly her mother-in-law used to torture her over insufficient dowry.

38. On considering the evidence adduced by both the parties we are of the view that the situation in the matrimonial home of the petitioner and the respondent was not as congenial as it should have been in the case of newly married couple. We are of the view that the parties were not pulling on well no doubt but whether that was wholly due to the conduct of the respondent appears to be very much doubtful. The learned trial Judge on analysing such evidence considered the same to be some domestic tiffs. The evidence of Kali Pada Chakraborty also clearly reveals that he was also not satisfied with the conduct of his daughter-in-law. We have already indicated that the respondent had also shown some abnormal behaviour which a newly married wife would not show. But the marriage was only one year old when the respondent came back to her father's house in February 1981. We are of the view that the incidents which the petitioner wanted to highlight as the alleged acts of cruelty and torture were not really so. They were really some domestic tiffs which required to be ironed out. There is some dispute as regards the date when the respondent left the matrimonial home. The Respondent left the matrimonial home on 11-2-1981, according. to the petitioner. There is the evidence of the petitioner's father, his married, sister and PW 7, Lokesh Chandra Chakraborty. On the contrary the respondent's case is that the petitioner took her on 12th February 1981 to her father's house in connection with his brother's marriage and did not thereafter take her back.

38A. On considering the evidence adduced by both the parties we are of the view that the case of the petitioner in this respect is correct. The petitioner on 11-2-1981 left the house of her father-in-law. Lokesh Chakraborty has stated in his evidence that she told to him that she would again come back. That incident took place only two days after of Saraswati Puja night and that might be a sequel of the incident

Saraswati Puja night. We have been from the evidence of Sri Lokesh Chakraborty that on that very night on 9th February 1981 the respondent wanted to leave the matrimonial home but he could persuade her not to do on that night. Thereafter the respondent actually left on 11-2-81. Sri Kali Pada Chakraborty himself went to Lokesh Chakraborty when the respondent was leaving Matrimonial home and then Lokesh Chakraborty came there. There is, however, the admission of the petitioner that even after the respondent had gone away from the matrimonial home she contacted him over telephone but at that time he told his wife that now her parents would have to come to his father's house and settle the matter. So, the petitioner also even on that date wanted that the matter should be resolved by the parents of both the parties so that they could again resume their conjugal life.

39. The above facts and circumstances would clearly reveal that it was a clear case of maladjustment between the married couple in the initial months of marriage. We cannot blame respondent alone for such maladjustment. If the parties had to live a happy married life they had to adjust themselves but only because initially they could not adjust themselves it would not be fit and proper to dissolve such marriage. Whether the acts amount to cruelty would be determined from the above facts and circumstances of the case including culture, temperament, status in life, state of health, daily life and other facts of the parties. This is what is the view of the Division Bench of Calcutta High Court in [Jyotish Chandra Guha Vs. Sm. Meera Guha](#), which can be called normal wear and tear of life do not amount to cruelty.

40. We have already indicated that we have offered to conciliate. Before us the wife even asked her husband to forgive her and to take her back but the husband showed a very adamant attitude. That is why the conciliation has failed.

41. We are unable to hold that the respondent treated the petitioner with cruelty justifying us to allow the appeal and to grant the petitioner the decree for divorce u/s 13(1)(a) of the Hindu Marriage Act. We are in full agreement with the findings of the learned trial Judge that the petitioner has failed to prove the ground of cruelty for obtaining the divorce.

42. The appeal is, therefore, dismissed with costs.

Siba Prasad Rajkhowa, J.

43. I agree.