(1879) 07 CAL CK 0004

Calcutta High Court

Case No: None

Jogendronundini Dossee		APPELLANT
	Vs	
Hurry Doss Ghose		RESPONDENT

Date of Decision: July 18, 1879

Citation: (1880) ILR (Cal) 500

Hon'ble Judges: Richard Garth, C.J; Pontifex, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

We are of opinion that the decree of the Court below should be confirmed. Speaking only for myself, I confess I think it very probable that, if we only had to consider the comfort and happiness of the parties concerned, the best way of disposing of the case would be to dismiss both suits. But the parties have taken their own course; they have insisted upon going to the expense of a trial. The case has been decided by the Court below, and we have only to consider whether that decision is right.

2. Now, although we entertain no doubt, that, as a matter of law, a suit for restitution of conjugal rights may be maintained by a Hindu in this country, we are not at all prepared to say, that the same state of circumstances which would justify such a suit, or which would be an answer to such a suit, in the case of a European, would be equally so in the case of a Hindu. The habits and customs of the native community, especially as regards the marriage state, are so different from ours, that we think in such a matter as a suit for the restitution of conjugal rights the Hindu and the European cannot always be fairly judged by the same rule.

3. We are bound to say, however, that, in this particular case, the conduct of the husband was such, both as regards adultery and cruelty, as in our opinion to justify the wife at one time in seeking her mother''s protection, and if nothing had afterwards occurred, which amounted to condonation of the husband''s offence, we are not prepared to say that he would have been entitled to sue her for the

restitution of his conjugal rights.

4. He appears to have lived a very profligate life; he was not only in the habit of consorting openly with prostitutes, but he seems to have insulted his wife by introducing one of them on several occasions into her private apartments. He indulged habitually in wine and spirits (not perhaps to the extent which his wife would lead us to believe), but at any rate so as to be very constantly in a state of intoxication, and when he was in this condition, he ill treated and threatened his wife with knives and other weapons, in such a way as to induce very natural apprehensions on her part for her own personal safety.

5. Under these circumstances, she left his house, and went to live with her mother under the protection of her own family. Here her husband visited her, and through the wise and proper mediation of her own relations (her mother and brother) a reconciliation to all appearance took place. The husband, on the occasion of these visits, slept and cohabited with his wife in the usual way, and, so far as appears, with her full and free consent. On one occasion he stayed with her for several days, and the result of this intercourse was that she became with child.

6. It appears to us that this conduct of the wife unexplained, is certainly very cogent evidence that she had condoned his previous conduct. We think that, if in this state of things he had requested her to return to his house and she had refused to do so, he would have been entitled to bring a suit against her for the restitution of his conjugal rights.

7. It has been urged upon us strongly on behalf of the wife, that the fact of her thus cohabiting with him at her mother''s house, must be attributed, not to any desire for reconciliation, but rather to a sense of duty, and to the obligations under which a Hindu wife is placed, to submit herself to her husband''s wishes and authority, and we have been referred to a class of cases in England, of which D''Aguilar v. D''Aguilar (1 Hagg., 774, &c., and 3 Hagg., 777) and Curtis v. Curtis (1 Sw. & Tr., 75 & 192) are a type, where it is undoubtedly said by high judicial authority, that condonation on the part of the wife must, in many cases, not be presumed from the mere fact of her continuing to cohabit with her husband after infidelity or cruelty on his part, because a virtuous and self-denying woman will often, for the sake of her children, or for the peace or reputation of her family, submit to live and even sleep with her husband as a matter of duty, against her own inclinations, and without any intention of condoning his offence. No doubt, there is much force in this argument, and if, in this instance, we could see that the cohabitation and apparent reconciliation between husband and wife were the result of actual or moral force or compulsion, we might take a different view of the case.

8. But here, as it seems to us, the wife, was to all intents and purposes a free agent; she was under her mother''s roof, and the protection of her mother and brother. There was no reason why, if she had so pleased, her husband might not have been

excluded from access to her altogether. There was no difficulty about her child, because she had the child under her own charge, and no threats or intimidation appear to have been used by the husband, either to compel compliance with his wishes, or to take away the child from her, in case she refused to consort with him.

9. We cannot, therefore, accede to the contention of the appellant''s counsel, that any force, either actual or moral, was used to coerce her free will, and that being so, we are disposed to put the same construction upon her conduct as we should upon that of a European lady under similar circumstances, and to say that a reconciliation did in fact take place, and that she did so far condone his offence, as to restore him to his former conjugal rights and position.

10. The only remaining question is, whether the slap on the face, which he afterwards gave her on one occasion, was such an act of cruelty and ill-usage as to neutralize the effect of the condonation and to justify her in treating the reconciliation as if it had never taken place.

11. Mr. Bonnerjee was, no doubt, quite right in saying, that condonation, however complete it may be, in the sense of restoring the husband to his former privileges, is so far conditional--see Durant v. Durant (1 Hagg., 751), Curtis v. Curtis (1 Sw. & Tr., 75 & 192)--that it depends upon the offence of the husband not being repeated; and in the case of cruelty, we quite think that a much smaller measure of offence would be sufficient to neutralize the condonation, than would have justified the wife in the first instance in separating herself from her husband. But then we consider that the act or acts of cruelty must be of such a nature as to give the wife just reason to suppose that the husband is about to renew his former course of conduct, and consequently to entertain well-founded apprehensions for her personal safety.

12. Now we cannot put so serious a construction upon what occurred in this case. The slap on the face was given with the open hand, at a time when the husband was under the influence of drink, and in a moment of irritation, when his wife was worrying him for money,--a subject which seems to have been a very frequent cause of discord between them. The brother certainly says that he heard his sister cry out, and on coming into the room he saw the traces of tears upon her face; but, considering the state of temporary excitement under which the husband was labouring, we think it would be taking too serious a view of the circumstances to say that the blow was sufficient to neutralize the effect of the condonation. If the wife had only exercised, as she should have done, a little good sense and discretion, she would have known that it was not a prudent thing to introduce irritating topics at such a time; and it is to be hoped, that when she returns to her husband''s house, which we think it our duty to require her to do, she may learn so to regulate her own conduct, and to deal patiently and judiciously with her husband''s frailties, as to secure her own happiness and comfort.

13. There seems reason to suppose, that she is under some mistake as to the character of the woman who is living in Lokenath''s house. From the affidavit which has been read to us, it appears that this woman is an old nurse and dependant of the family, who has lived there for many years. But we think it right, after what has occurred, to secure the defendant a home untainted by the presence of any persons of bad character; and we, therefore, propose so far to modify the decree of the lower Court, as to make it a condition that the house which the husband provides shall be in every respect fit for the reception of a virtuous and respectable wife.

14. As regards the costs, the Advocate-General has very properly offered on behalf of his client to waive his right to them in both Courts; but much as we approve of the spirit in which that offer is made, we think that we ought only to act upon it, conditionally upon the defendant submitting herself to the decree of the Court in all obedience and good faith. If she does so, she will have to pay no costs. If she does not, she must pay the costs of both Courts on scale No. 2. Either party will be at liberty to apply to the lower Court in the event of the terms of the decree not being fairly and properly carried out.