

Calcutta High Court

Smt. Krishna Banerjee vs Bhanu Bikash Bandyopadhyay on 15 June, 2001

Equivalent citations: AIR 2001 Cal 154

Author: J Banerjee

Bench: Y Meena, J Banerjee

JUDGMENT Joytosh Banerjee, J.

1. This appeal is directed against the judgment passed by the learned Additional District Judge, 14th Court, Alipore, 24-Parganas(S) on 1-8-1989 in Matrimonial Suit No. 32 of 1987 by which the learned Court below dissolved the marriage between the parties of the suit under the Hindu Marriage Act, by a decree of divorce. The said suit was filed by the husband/respondent on 7th of October, 1985 on the allegations of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

2. Briefly stated the case of the plaintiff/ respondent is as follows :--

The marriage of the parties was solemnized according to Hindu rites and ceremonies on 9th February, 1982. At the time of the marriage wife /appellant was residing with her father at Udaipur, Rajasthan where she was born and brought up. During their stay at the official quarters provided by Durgapur Steel Plant after the marriage, the wife/appellant showed unusual habits and temperament and behaved with the husband/ respondent very rudely with absolute indifference towards the need of the husband/ respondent. She demonstrated abnormal sexual behaviour from the very beginning of the marriage. She was found very much selfish and self-centered. She did not care to look after the household duties, and as a result, the husband/respondent had to leave for his office on many occasions without any breakfast or to prepare breakfast for himself. In most of the evenings, the wife/respondent was staying away from the house on various pretexts and the respondent had to go out for night duty without taking meal. It is further alleged that the attempts of the respondent to persuade his wife to change her attitude and behaviour towards him were reacted with sharp unamannerly expression that being the daughter of a richman and not a servant in the respondent family she should be at liberty to act according to her own liking. The appellant/wife, went to Udaipur for sometime in the year, 1982 and on her return from there in or about June, 1982 she expressed resentment over the staying of the mother of the respondent who was staying with him at Durgapur and wanted him to send her back to Calcutta. On being refused, the wife/appellant started causing mental and physical torture upon the husband by not allowing him to take rest or sleep throughout the whole day after working in the night duty in a wretched mental and physical condition. As a result of which, the husband became seriously ill and he had to be hospitalised for about one month during the period July and August, 1982. It is further alleged that during this period, the old mother of the respondent was required to do all house hold works including cooking and she was subjected to extreme torture and ill-behaviour by the wife/ appellant and even did not care to visit her husband in the hospital and during the period when the respondent remain admitted in the hospital she visited such hospital only for once or twice. It is the further allegation that respondent suffered very severe mental distress when in December, 1982, he came to know that the wife/appellant was suffering from kleptomania. It is the further allegation of the plaintiff/respondent that being aware of the pregnancy of the wife/appellant in or about January, 1984, the respondent took all necessary steps for her medical examination by a competent

doctor at Durgapur Steel Plant Hospital. But for some unknown reasons, the appellant became more furious and cruel in her dealing and behaviour with him. She tried to set him on fire by pouring kerosene oil on his person. It is further case of the respondent/ plaintiff that the appellant/wife gave birth to a daughter at new Land Nursing Home on 26th September, 1984 wherefrom, the appellant/wife was taken to her parents house at Naktala, Calcutta. The husband/respondent was meted out with ill treatment and insult by the wife/appellant and her mother during the former's visit to Naktala house without any reason. During the 'Annaprasan' ceremony of the child, the wife/appellant acted and behaved in utter disregard to the sentiment of the husband/respondent and his relatives when she even did not accede to their request to attend ailing father of the respondent by staying at his brother's residence at Salt Lake, Calcutta. During subsequent visit at Naktala House, the wife/appellant not only ill-treated the husband/ respondent, but also asked to seek divorce as she found herself incapable of mending her ways by restraining herself from treating the respondent and his relatives with cruelty. When the husband/respondent expressed his deep concern for child, the wife appellant declared that the child was begotten by some one else. She enjoyed the pain and agony suffered by the husband/respondent resulting from such utterance. It is the specific allegation made by the husband/ respondent that through the period of her stay with her husband she insisted for a divorce on the ground of her hatred towards the respondent and his family. She also threatened to kill the husband for the purpose of securing her freedom. She also wrote to the elder brother of the husband/respondent to arrange for dissolution of marriage.

3. The wife/appellant contested the suit on a written statement denying all the material allegations raised in the plaint. The wife/appellant on the other hand alleged in the written statement that when the respondent/husband came to know about the pregnancy of the wife, he expressed that he did not like any child and therefore the appellant/wife should abort the child. But the appellant/wife did not agree to the proposal of the abortion and thereafter the husband/respondent started abusing and ill-treating the wife/appellant in various ways.

4. On the pleadings of the parties, the learned Judge raised certain issues including the issue touching the question of cruelty. On consideration of the facts and circumstances and also the evidence particularly some documents, the learned Court below came to a finding that by raising a false allegation that the husband/respondent wanted the wife to abort the child, as the husband did not want such pregnancy of his wife to occur so soon, the wife/appellant caused mental torture on the husband. Moreover through the letters, the wife/appellant expressed her desire more than once for divorce and when it was not otherwise proved that such expression did not ventilate her real intention and when it had been satisfactorily proved by the husband/respondent that by her conduct and expression, the wife/appellant inflicted enough mental cruelty on him, the husband/respondent should get a decree for divorce.

5. The learned counsel for the wife/ appellant has submitted that the learned trial Judge erred in observing that the respondent/husband in his evidence corroborated his plaint. It is the submission that if the evidence of the respondent/husband is analysed it will appear that he stated something which was not in the pleadings or just the opposite of what had been alleged in the pleadings. In order to show this, the learned counsel has mentioned about the specific pleading wherein the respondent/husband alleged in the plaint that the appellant/wife exhibited abnormal sexual

behaviour from the very beginning which was unusual for a newly wedded girl. Her sexual demand was exacting. In his examination-in-chief, he deposed that the appellant/wife was sexually cold. Secondly, it has been contended that although in his examination-in-chief, the husband/respondent specifically alleged that seeing his mother both his wife and her mother became furious and both of them began to torture her mother as a result of which she became ill and had to return Calcutta. But the mother of the respondent/ husband was never examined in connection with the case although she was alive at that point of time. In this connection, the learned counsel has placed his reliance in the case of Shankar Prosad Paul Chowdhury v. Madhabi Paul Chowdhury to contend that for non-examination of the members of the family who may be described as witness to the alleged acts of cruelty, an adverse inference may be drawn by the Court. It is also the argument of the learned counsel for the wife/appellant that the trial Court placed reliance on Exhibit-1 and according to such Court it was a vital document on which only, the Court could grant a decree for divorce. Exhibit-1 was only a draft copy of a letter written on pages of the diary with a forwarding letter addressed to Dr. A. K. Dutta. There is no proof and/or evidence that the said letter was posted to the addressee at all. The plaint is completely silent about exhibit-1. Further, the doctor was not examined and nothing was put in the examination of the appellant/wife about such letter. Moreover, the contents of letter cannot amount to cruelty as such letter can only indicate about the character of the appellant/wife but the husband in his evidence clearly stated that he did not suspect the character of his wife. It is the further argument from the side of the wife/appellant that the learned Court below relied on some documents which were not exhibited and therefore these should not be relied on in coming to any conclusion on the aforesaid issue, namely, the alleged cruelty both physical and mental.

6. It has been argued on behalf of the husband/respondent, on the other hand that the allegations of physical and mental torture have been proved through some documents exhibits 1(b), 2(c) and 2(d) wherein the wife/appellant admitted ill treatment and misbehaviour with the husband/respondent, incidents of theft committed by the wife/appellant at least on two occasions with an object to disgrace the husband/ respondent in the eyes of the others, as per exhibits 1 and 2(c) physical torture by her attempts to burns the husband/respondent through Exhibit 1(b). It is further submitted that one recognized conduct amounting to cruelty is making of baseless/unfounded allegation by one spouse against the other. In this respect, our attention has been drawn to the specific finding of the learned Court below that the allegation raised by the wife/ appellant that her husband, coming to know about her pregnancy wanted that she should terminate such pregnancy by opting for abortion, has not been proved by the wife/appellant and the learned Court below also disbelieved the wife/appellant's plea of condonation, on the allegation of cohabitation in May, 1985 for want of satisfactory evidence. Lastly, it has been submitted on behalf of the husband/respondent that the admissions are substantive evidence by themselves in view of Section 17 and 21 of the Indian Evidence Act though they are not conclusive proof of the matters admitted. That being the position, the admission duly proved are admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party when appearing as witness was confronted with those statements in case such party made a statement contrary to those admissions.

7. Cruelty as contemplated under Section 13(1)(ia) is both physical and mental. In this case as per the allegations of the petitioner/husband he was subjected to both physical and mental cruelty. Although the petitioner/husband gave one instance of physical cruelty of which we will consider later on, we are mainly concerned herein with allegation of mental cruelty. It is not possible to define mental cruelty exhaustively. As observed by Lord Reid in *Gollins v. Gollins* : (1) 1964 AC 644 : (1963) 2 All ER 966. (2) (1895-9) All ER Rep 1; (1897) AC 395 :--

"No one has ever attempted to give a comprehensive definition of cruelty and I do not intend to try to do so. Much must depend on the knowledge and intention of the respondent, on the nature of his (or her) conduct, and on the character and physical or mental weaknesses of the spouses, and probably no general statement is equally applicable in all cases except the requirement that the party seeking relief must show actual or probable injury to life, limb or health."

8. Now, the particular provision of the S. 13 uses the words treated the petitioner with cruelty without defining the word cruelty. In *Shobha Rani v. Madhukar Reddi* , it has been held "it is the conduct in relation to or in respect of matrimonial duties and obligations. It is the course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the Court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted."

9. In the instant case, the admitted position is that the marriage of the parties took place by negotiation and it was solemnized according to Hindu rites and ceremonies on 9th February, 1982. The wife/appellant is the only child of her parents and she used to reside with her parents at Udaipur, Rajasthan where she was born and brought up. The husband/respondent of this appeal is a qualified engineer and at the relevant point of time he was an employee of Durgapur Steel plant. After their marriage, the couple stayed for a brief period at the Salt Lake residence of the older brother of the respondent/husband and thereafter went to stay at the official quarters provided by the Durgapur Steel Plant. As per the allegation made by the husband/petitioner of the matrimonial suit that after the marriage, the wife/respondent showed unusual habits of temperament and behaved with the husband/petitioner very rudely with absolute indifference towards the need of the husband/petitioner.

10. In order to prove his case, the husband/respondent of the present appeal examined in all 3 witnesses including himself.

On being examined as P.W. 1, the husband Bhanu Bikash Banerjee has alleged in his evidence that at Durgapur his wife appeared to him abnormal and self-centered. She was sexually indifferent to

him and cold. She also refused to cook for her husband, stating that she came from a rich family and could not be expected to perform the house-hold duties. The other two witnesses examined from the side of the respondent/husband are P.W. 2, Kalidas Malakar a colleague of P.W. 1 and P.W. 3 Sadhan Ranjan Banerjee, the elder brother of the P.W. 1. The other two witnesses naturally were not competent to say about the sexual relationship between the husband and wife or how the husband used to be treated at Durgapur where both the parties of the suit used to stay after their marriage. On the other hand, the wife examined herself as D.W. 1 and denied in her evidence that she was selfish and self-centered. She asserted that she used to cook while they were staying at Durgapur, she used to do domestic work. So far, the allegation of wife being sexually cold towards husband is concerned, we find that the evidence of the husband on this particular point goes against his specific pleading made in connection with the matrimonial suit. In the plaint, the specific allegation made on this point at paragraph 5 was as follows :--

"She exhibited abnormal sexual behaviour from the very beginning of the introduction of the parties after marriage, which was a bit unusual on the part of a newly wedded girl. Her sexual demands were exacting....."

Therefore, the evidence of the husband regarding the alleged indifference of the wife towards sexual relation between the parties is not at all acceptable. So far the other allegation is concerned, that is nothing but an oath versus oath. Moreover, in our considered opinion refusal to attend the domestic work etc. cannot be in the ordinary circumstances, an instance of cruelty either mental or physical. The respondent/husband also deposed that in the last week of May, 1982 his wife left for Rajasthan. From Rajasthan she used to send him letters, which were painful and humiliating. Unfortunately this allegation was not made referring to any particular letter written by the wife to the witness. So the whole allegation seems to us vague which cannot lead us to any finding. It is the further evidence of the husband P.W. 1 that in June, 1982 he went to Rajasthan and brought his wife back. It is alleged finding his mother at his residence at Durgapur she flared up and asked the witness to drive his mother out and as the witness refused she started torturing the witness physically and mentally. Strongly enough, the mother of the witness has not been examined in connection with the matrimonial suit and there is no explanation forthcoming for such non-examination. Here we must point out that as per the allegation made by the husband in his deposition, the wife started torturing the husband physically and mentally only because the husband refused to drive out his mother from their Durgapur house. Therefore, the mother would have been the best witness in order to establish here whether she had been to Durgapur house of P.W. 1 at the relevant point of time and whether the wife/appellant flared up due to her presence in that house or not. It is the further evidence of the husband that as a result of the same he became seriously ill in July, 1992 and thereafter he was admitted to hospital for treatment wherein he stayed for a month. It is to be noted here that the respondent/husband has not made any attempt to show the actual cause of his admission in the hospital at the relevant point of time. From the cross-examination of the husband, we find that he admitted that he had spondenlities and for the said decease he was admitted into hospital. So it is not quite clear whether at the relevant point of time, the husband was admitted in the hospital for the aforesaid decease or he became ill due to the alleged torture by the wife. In the absence of any other evidence specially the medical evidence it is not possible for us to come to a conclusion that such admission in the hospital was due to mental and physical torture done by the wife. In his

evidence, the husband/respondent further alleged that on 14-3-1985, he went to his father-in-law's house at Naktala with one of his friends, namely, Kalidas Malakar to get back his child. At that time he was prevented from getting back his child and both him and his friend were driven out from the said house. We must pause for a moment to point out, that refusing to hand-over the custody of the child to the husband, in the facts and circumstances of the case, cannot be an instance of mental torture. Admittedly the child was born on 26-9-84. So on 14-3-85 when the husband/respondent had been to the father's place of the wife/appellant along with his friend P.W. 2, the child was less than 6 months old and therefore the mother could refuse to handover the custody of the child to her husband specially when she was not living together with her husband. P.W. 1, the husband/respondent further stated in his evidence that on that occasion he along with his friends P.W. 2 were treated badly by the petitioner and her mother. But besides making such omnibus statement, P.W. 1 did not give any indication in what way he and his companion were ill treated on that occasion. On the other hand, P.W. 2, Kalidas Malakar in his deposition claimed that on that occasion, the mother of the respondent/wife came out and abused them with filthy language and ordered them to get out of their house. There is no allegation that the wife/appellant in any way participated in hurling the abuse towards the witness and respondent/husband. So far the other witness for the husband/respondent is concerned we find that P.W. 3 Sadhan Ranjan Banerjee is the elder brother of the respondent/husband. At the relevant point of time, the witness was an Executive Engineer attached to P.W. D. of the Government of West Bengal and used to occupy Quarter No. G-1, Shyamali Housing Estate, Salt Lake. This witness raised two specific allegations against the appellant/wife, namely, that when the -witness visited the Durgapur house of the parties with his mother, the wife/appellant behaved very badly with him. Secondly, that on many occasions, the wife/appellant was requested to stay at his aforesaid quarters but she refused. So far as the first allegation is concerned, we find that there is no allegation regarding the alleged misbehaviour with P.W. 3 either in the plaint or in the evidence of the husband/respondent. No doubt this witness too wanted to allege that his mother left the Durgapur house of the parties as she felt too much insulted but in the absence of the evidence of the mother this allegation cannot be accepted. Regarding the further allegation that the wife/appellant refused to stay at the Salt Lake residence of the witness we find that it is an admitted position that from 24-4-1985 till 29-4-1995, the parties of the matrimonial suit resided at the Salt Lake residence of the P.W. 3 in connection with the 'Annaprasan' ceremony of the child. That apart they celebrated the birthday ceremony of the child together on 26-9-1986 at the said Salt Lake residence. The said Salt Lake residence admittedly had only 3 bed rooms wherein the P.W. 3 used to reside with his wife, children, mother. His other brothers also used to stay there occasionally. So it might not be possible for the wife to stay with her husband in the said flat due to paucity of accommodation.

11. In the instant case, the learned Court below has come to the conclusion that the wife/respondent of the case treated the husband/petitioner with mental cruelty as she falsely alleged that the husband, on getting the information that she was pregnant insisted that she should abort the child. It is well settled that one recognized conduct amounting to cruelty is making of baseless/unfounded allegation by one spouse against the other. But at the same time, no hard and fast rule can be laid down as to what acts or conduct will amount to cruelty in any given case. What may amount to cruelty in one case may not amount to cruelty in another. In deciding whether or not a particular state of affairs amounts to legal cruelty, the Court has to consider the social status, the

environment, the education, the mental and physical conditions and the susceptibilities of the innocent spouse as also the custom and manners of the parties. Whether acts and conducts complained of constitute cruelty have to be construed in reference to the whole matrimonial relationship. In the instant case, the husband is a qualified engineer and the wife is an educated lady. Admittedly when they were living together as husband and wife, the wife became pregnant. Now, it is the allegation of the wife that the matrimonial disharmony started when the husband insisted that she should have aborted the child. It transpires from the evidence of the husband that a suggestion to this effect was given to him in course of the cross-examination of the witness and the same was stoutly denied by the husband. From the evidence of the wife (D.W. 1), Krishna Banerjee, we find that in January, 1984 she conceived and when she disclosed conception to her husband at Durgapur, her husband wanted abortion of such conception and she was treated accordingly, by Dr. Malay Ghosh. So we find that in course of the cross-examination of the husband a suggestion was given that the husband did not want the child and he advised the doctor to cause abortion of the wife. The wife went further by stating that she was treated by Dr. Malay Ghosh for the purpose of abortion. Undoubtedly, the allegation raised is serious one and the wife being an educated lady must have understood the consequence of such allegation. But, we find that no serious attempt has been made from the side of the wife/respondent to establish such a serious allegation by producing documentary evidence and/or by examining Dr. Malay Ghosh who according to the version of the wife treated her for abortion. Then again if the wife was actually treated for abortion at the early stage of pregnancy, there is no explanation furnished why actually there was no abortion. On the other hand, the evidence of the wife suggests that as the husband did not want the child he started torturing her. In this way, we find that the wife not only brought a false allegation but pointed out that such circumstance was the sole reason for the ill treatment done to her by her husband.

12. In *Rajinder Bharadwaj, v. Mrs. Anita Sharma*, making false allegation and filing of false and scandalous cases by one spouse against the other amounts to cruelty. An unfounded allegation of adultery by one spouse against the another constitute mental cruelty of gravest nature, as decided in the case of *Harendra Nath Burman v. Suprova Burman*. In the case reported in AIR 1990 Cal 367, (*Smt. Santana Banerjee v. Sachindra Nath Banerjee*), it has been held, wife making derogatory and ugly remarks against husband in the written statement and deposition, constitute mental cruelty.

13. Apart from the aforesaid unfounded serious allegations levelled against the husband, which to our mind was sufficient to establish mental cruelty on the part of the wife/appellant, there is the allegation that the wife was seen suffering from kleptomania. The husband in his evidence as P.W. 1 has stated that his wife was seen suffering from Kleptomania. She once committed theft of a wrist watch from the hand of the son of Mr. Rath and also committed theft of some cash money from the identity card of one Somnath Bhattacharyya his friend. It is the further allegation of the husband that as a result of it his social position (as an officer of Durgapur Steel) was degraded to a great extent and he withdraw himself from social connection at Durgapur. On being cross-examined on this point P.W. 1 stated further that his wife took the money from the identity card of his friend Somnath in his presence and Somnath complained about it to him and a wrist watch from the son of Mr. Rath a neighbour of P.W. 1 was taken away by his wife also in his presence. It was only suggested that the story was manufactured by him as his wife admitted such offence. This goes to show that there was an admission on the part of the wife regarding these allegations. It is also

reflected, in a way, in the letter written by the wife to the husband and which has been marked Exhibit-2C and the relevant para at page 14 of Exhibits, (P.B.) runs as follows :--

"My actions at Durgapur were simply done to let you down coz of my own selfish interests. At that time I did not have any deep feeling for you....."

14. Husband's evidence on this point gets further corroboration from the evidence of P.W. 2 his colleague who stated in his evidence that the petitioner/husband could not visit the house of the witness with his wife. The witness invited them but the husband disclosed that his wife had Kleptomania. The witness further stated in his evidence that he did not find the petitioner/ husband and his wife in any social function. The cross-examination of the witness disclosed further that he was petitioner's family friend and he came to depose on receiving summons. But there is no cross-examination on this particular point. So this unchallenged evidence of P.W. 2 that P.W. 1 refused to visit his house with his wife as she was suffering from Kleptomania should be accepted as the same has corroborated the oral testimony of P.W. 1 on this point. In this background, we do not feel any hesitation to accept the evidence of the husband where he gave instance of Kleptomania by his wife. Having regard to the status of the parties, it can be said that due to such habit of the wife, the prestige of the husband in his society was lowered and in this way the wife caused mental cruelty to the husband.

15. Before we part with the discussion regarding mental cruelty it should be pointed out that Clause (1-a) of Section 13(1) was amended in 1976. Before the amendment of 1976, the petitioner was required to show that the respondent had treated him or her with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the respondent. But after the amendment as the matter stands now, the said act or commission or conduct which constitute cruelty need not cause any sort of apprehension in the mind of the petitioner, Therefore, the Court is not required to ascertain further, whether the mental cruelty proved or established is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it would be harmful or injurious for him to live with the respondent.

16. The husband, P.W. 1 in his evidence has stated that on 11-5-84 she (the wife) attempted to kill him by pouring kerosene oil on his body but he did not lodge any diary at the police station to avoid social complications. In the cross-examination, it was suggested to him that the story of attempting to kill him by pouring kerosene oil was false and concocted. In her cross-examination, the wife as D.W. 1 admitted that on 11-5-84 she threatened the petitioner to kill him by burning. She added that she had to threaten the petitioner as he wanted to abort her child forcibly without her consent. We have already seen that the allegation made against the husband that he insisted abortion has not been proved. So we can conclude that the wife on 11-5-1984 wanted to kill her husband by burning. Of course she denied that she wanted to kill her husband by pouring kerosene oil on his body. This allegation also gets further corroboration from an entry in the page of a diary maintained by the wife which has been marked exhibit 1 (b), wherein the wife admitted that she tried to burn her husband but due to resistance offered by her husband she could not succeed. This entry, no doubt, is an admission, on the part of the wife to kill her husband. An attempt has been made from the side of the wife/appellant that the wife was forced to make those writings. In other words, the writings on



the diary and some of the letters of the wife which have been produced by the husband and which documents have been marked exhibits should not be relied on as these were not instances of voluntary action on the part of the wife. But we are not inclined to accept such argument. It transpires that the wife did not deny the writings in her evidence. She only attributed, that these documents were out come of pressure created on her. But the letters and entries of the diary were not made on the same day in the same sitting. They bear the different dates. The letters were sent through post office. There was not allegation prior to her coming to the witness box that those letters or writings in the diary were taken forcibly.

That being the position, we do not find any difficulty in coming to the conclusion on the basis of the entire evidence both oral and documentary that the wife even tried to kill her husband by setting him on fire. This is no doubt an extreme case of physical cruelty.

17. Besides the aforesaid grounds, on consideration of the entire facts, circumstances and evidence on record, we find that the marriage between the parties, for whatever be the reasons has broken down and the parties can no longer live together as husband and wife. This would be evident from the early stage of the marriage between the parties. For this purpose two letters Exhibit-2(k) and Exhibit-2(l) written by the appellant/wife to the elder brother of the husband would be relevant. In the letter dated 30-11-1983 marked Exhibit 2(k) (at page 24 of the Paper Book), the wife requested her brother-in-law to ensure divorce between her and her husband. She further wrote in that letter that she was making this request after thinking about the pros and cons of such proposal, noting further that she had already convinced her father that the relationship between the parties should end. In the letter dated 28-12-1983 Marked Exhibit 2(1), the wife further disclosed that she was born and brought up outside West Bengal and also since she was woman of independent nature, she found it very difficult to adjust in the family of her husband and therefore her brother-in-law should consider their case for divorce. Then there is Exhibit-2 (at page 7) of Paper Book which is letter of the husband/respondent to his wife wherein the husband complained about the extreme cruel nature of his wife with these words "since after our marriage you have perpetrated extreme cruelty upon me and made my life miserable. Considering our position in the society, I bore all the braunts of your misbehaviour and cruel treatment silently with the hope that you will be a different lady altogether after attainment of motherhood, but my hopes in that respect have been belied." There is yet another letter dated 18-7-1985 written by the husband Exhibit-2(N) at page 27 Paper Book, in which the husband described very clearly how the wife behaved with him, his friends and relatives. In the second paragraph of the letter relevant of which reads as follows :--

"I brought you with Devi (the daughter of the parties) on 12-6-85 morning from your residence to my Salt Lake residence for attending the marriage ceremony of my friend 'Amrit'whom you know very well. That day yourself and me attended the evening function 'Barjatra' along with my other Durgapur friends Somnath Da, Samar Da with families. We all were also supposed to attend the major ceremony, i.e., 'Baubhat' at Amit's residence on 14-6-1985 evening but suddenly without any sort of reason minor in nature, you started behaving badly with all of us including my old parents who were before that time enjoying the presence of my daughter with them". You were almost on the verge of leaving our house alone on that very moment without carelmg for our child even and in spite of cordial request at least for the sake of the child from all of us whom you wanted to leave our

home, i.e. at Salt Lake. After lots of persuasion with our folded hands, I had to drop you at your place with Devi in the same evening to avoid all the idecency at our locality..... You will not realise the way I was humiliated mentally at the Amit's residence for attending the ceremony at the late evening....."

There is also another letter from the wife to the husband which is marked Exhibits-2(m) dated 2-3-85 wherein the wife categorically informed the husband that her staying at Calcutta in her father's house was a final decision and he should send her things accordingly. The wife through that letter also requested the husband to take his daughter away as she was a problem child and as she thought that the child should be brought up in the husband's family. The wife also clearly stated that it would not be possible for her to adjust with the husband. Coupled with this, admitted position here is, the parties of the present suit, have been living separately since 1984, since the birth of their child or soon thereafter.

18. The Hon'ble Supreme Court dealt with the question of irretrievable break down of marriage in the case of Mr. Jorden Diengdeh v. S. S. Chopra, . That case was under the provisions of Indian Divorce Act, 1869. But in dealing with the matter, the Hon'ble Court considered the relevant provisions of the Hindu Law, Mahamedan Law, Special Marriage Act, 1954 and came to the following observation, at para 7 of the reported judgment, which runs as follows :--

"It is thus seen that the law relating to judicial separation, divorce and nullity of marriage is far, from uniform. Surely the time has now come for a complete reform of the law of marriage and make a uniform law applicable to all people irrespective of religion or caste, it appears to be necessary to introduce irretrievable breakdown of marriage and mutual consent as grounds of divorce in all cases. The case before us is an illustration of a case where the parties are bound to go together by a marital tie which is better untied. There is no point or purpose to be served by the continuance of a marriage which has so completely arid signally broken down." in another case of Smt. Sneha Prabha v. Ravinder Kumar , the Apex Court granted the divorce between the parties with the following observation :--

"We have heard the learned counsel for the parties. We are satisfied that the marriage between the parties has irretrievably broken down. There is no chance of their living together."

19. From the total evidence as discussed above and other facts and circumstances we are constrained to hold that the wife after marriage treated her husband with cruelty and the matter went so far that, it is evident from the entire facts and circumstances that the marriage in question has broken down and the parties can no longer live together as husband and wife. In this background, we do not find any reason to interfere with the divorce granted by the Court below. In the result, the appeal must fail. The appeal is therefore dismissed, Judgment and order granting dissolution of the marriage, solemnized between the parties, by a decree of divorce; is hereby confirmed. But having regard to the facts and circumstances we make no order as to cost.