



CASE REVIEW: SRI BHASKAR DAS V. SMTI. RENU DAS

RITTIKA KALITA

LLM Student

CHRIST(DEEMED TO BE UNIVERSITY)

ABSTRACT

Sri Bhaskar Das V. Smti. Renu Das is a judgment given by The Gauhati High Court which received several negative and positive feedback from various sections of society alleging that Hon'ble High Court has legitimized the patriarchal culture as there is no provision under law in India where wearing sindoor and sakha was considered as proof for marriage. The Court granted divorce to Appellant Bhaskar Das after arriving at a conclusion that his Respondent wife Smti. Renu Das refuse to wear the ritualistic sin door and sakha which denotes her non acceptance of marriage and frequent quarrel with her in-laws. Moreover the Hon'ble High court also stated that man has right to seek divorce if his wife stopped him from maintaining his old parents under The Maintenance and Welfare of Parents and Senior Citizens Act , 2007.

CASE DETAILS:

- Case Name: Sri Bhaskar Das V. Smti Renu Das.
- Case Number: Mat App. 20 of 2019.

Court: The Gauhati High Court (High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh).

- Citation : 2020 SCC Online Gau 2954.
- Bench : Division Bench of Chief Justice Ajai Lamba and Justice Soumitra Saikia.
- Appellant : Sri Bhaskar Das .
- Respondent: Smti. Renu Das.
- Date of Judgment: 19th June ,2020.

FACTS OF THE CASE:

The Appellant Sri Bhaskar Das is engaged as a contractual labour in Brahmaputra Cracker and Polymer Ltd at Madhuban. He got married with the respondent Smti. Renu Das on 17/02/2012. However, after a few months of their marriage Smti. Renu Das starts demanding separate accommodation from the appellant husband Sri Bhaskar Das. The respondent started creating conflicts in her home and situation started becoming horrible as the appellant unable to provide separate home to his wife. At last the Appellant decided to live separately with his respondent wife according to her wish.

In the month of June 2013, the respondent wife revealed that she will not be able to continue her marriage with the appellant Bhaskar Das and decided to leave her matrimonial home. The respondent wife filed a case u/s 498(A) IPC before Digboi Police Station being Digboi P.S. Case No. 154/2013 against the appellant and his family. The respondent wife asserted in WS that she was subjected to cruelty to meet illegal demands of dowry in the form of cash and kind by the appellant husband and his family. She was thrown out of her of the appellant house on 30.06.2012 by the appellant along with his family members and sent her to her brother's home in Dibrugarh. She also asserted that she already filed a case at Digboi P.S case No.154/2013, u/s 498(A) IPC against the appellant and his family members. The Appellant family applied for Anticipatory bail and compelling her to compromise and settled the dispute. The appellant family members also agreed to accept her back. Subsequently the appellant also filed a divorce petition TS(M)9/2014 before the Court of District Judge, Dibrugarh as he was not able to tolerate mental harassment from the respondent wife towards him and his family. She filed three cases against the appellant and his family members regarding dowry harassment, cheating and breach of an agreement in which husband made a contract with her to rent the apartment. Unable to bear the trauma the husband filed a divorce case before the court.

Family Court rejected the prayers of appellant Bhaskar Das stating that there were no such proper grounds on which a decree of divorce could be granted. Being aggrieved by the judgment of Family Court, the appellant filed an appeal in the Gauhati High Court in Mat App. 20 of 2019. A Review petition was also dismissed which was filed by the respondent by challenging the appeal order.

PROCEDURAL HISTORY:

The provision concerned with Section 498 A, of IPC, Section 13(1)(i-a) of the Hindu Marriage Act, 1955 and The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and most importantly the core subject of the judgment "Sakha" and "Sindoor".

498A. Punishment for subjecting a married woman to cruelty.¹

Husband or relative of husband subjecting her to cruelty- Whoever, being the husband of a woman, subjects such woman cruelty shall be punished with imprisonment for a term which may extend to three years and shall be liable to fine. Explanation.-For the purpose of this section, "cruelty" means-

(a). any willful conduct which is of such a nature as it likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

¹ Ins. By Criminal Law (Second Amendment) Act, 1983(46 of 1983), S.6.

(b). harassment of the woman such harassment is with view to coercing her to any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her meet such demand.

The main objective of section 498-A IPC is to provide protection to a woman who is being harassed by her husband or relatives of husband. Matrimonial Cruelty is a cognizable, non-bailable and non-compoundable offences which is defined in Chapter XXA of I.P.C. Indian Judiciary has been using this provision to provide safeguard to all woman facing various aspects of cruelty in their in laws. Some of the major Judgments in this regard are-

● **Arnesh Kumar V. State of Bihar**²:

In this case Court observed that Section 498A, IPC is a cognizable and non-bailable offence which is frequently used as a tool by the wives to harass the husbands and getting them arrested. Moreover, the court also laid down certain guidelines which the police officer must follow while arresting under section 498A, IPC or Section 4 of the Dowry Prohibition Act, 1961 and arrest must be made on reasonable ground. The court also authorizes the Magistrate to provide detention to the accused.

● **Manju Ram Kalita V. State Of Assam**³:

The Court held that “Cruelty” for the purpose of Section 498-A is to be established in the context of Section 498-A IPC as it may differ from other statutory provisions. Moreover it also held that petty quarrels cannot be termed as “cruelty” to attract the provisions of Section 498-A IPC. Woman has been subjected to cruelty continuously or at least in close proximity of time of lodging the complaint.

● **Rani Narashima Shastry V. Rani Suneela Rani**⁴:

In this case the Supreme Court observed that when a husband undergoes a trial in which he is acquitted of the allegation of offense leveled by his wife u/s 498-A of IPC, it cannot be said that no cruelty has mented on him.

13(1)(ia).Petition for divorce⁵:

- (i) *Any marriage solemnized whether before or after the commencement of the Act, may on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party.*
- (ia) *has, after the solemnization of the marriage, treated the petitioner with cruelty.*

In the Sri Bhaskar das V. Smti. Renu das, the divorce was granted on the ground of ‘cruelty’ under Section 13(1) (ia) of the Hindu Marriage Act, 1955. “Cruelty” is defined as “behavior that causes physical or mental pain to others and makes them suffer, especially deliberately”. As the case is revolved around mental cruelty.

² (2014) 8 SCC 273.

³ (2009) 13 SCC 330

⁴ (2019) SCC OnLine SC 1595

⁵ Section 13(1)(i-a) of the Hindu Marriage Act, 1955.

● **Bhagat V. D. Bhagat:**⁶

The court observed that mental cruelty in section 13(1)(ia) can broadly be defined as the conduct which inflict upon the other party such as mental pain and suffering as it would not make it possible for the parties to live with each other .

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

The Court also stated that according to The Maintenance and Welfare of Parent Senior Citizens Act, 2007 it is compulsory to look after the old parents.

2 (d) parents means father or mother whether biological, adoptive or step-father or step-mother, as the case may be, whether or not the father or mother is a a senior citizen:⁷

● **Narendra v. K.Meena:**⁸

The Supreme Court held that persistent effort of the wife to constrain her husband to be separated from the family members constitutes an act of “cruelty” to grant divorce.

■ **Significance of Sindoor and Sakha in the Hindu Marriage Act,1955:**

The Hindu Marriage Act, 1955 does not talks about the provision of Sindoor and Sakha. The benches comprising of Chief Justice Ajai Lamba and Justice Soumitra Saikia did not mention that it is mandatory for the Hindu Married Woman to wear Sindoor and Sakha and they throw light on the statement recorded by the respondent wife Smti. Renu Das in the presence of Magistrate where she clearly stated that she was not putting sindoor and sakha because she does not consider appellant Sri Bhaskar Das as her husband.

● **State V. Ajay Singh S/o Sh. Rameshwar:**⁹

In this case the accused tied mangalsutra and also placed a Sindoor on her forehead and establishes sexual relations with the victim. The Hon’ble court refused to consider this marriage and held the accused liable to be convicted for the offence punishable u/s 376 IPC. The accused misrepresented the victim that he has married her by putting ‘Sindoor’ in her ‘Maang’ and tying ‘Mangalsutra’ around her neck.

● **State V. Aniraj@Guddu**¹⁰

In this case the accused made sexual relation by filing her maang with Sindoor and tying Mangalsutra. However, the Court refused to consider this marriage as a valid marriage,

From the above discussion, several thing is clear that there is a great deal of confusion with regard to Sakha and Sindoor Judgment. One side contends that the Gauhati High Court had legitimized the patriarchal culture as there is no bindness on wearing Sindoor and Sakha. While majority asserted that in India customs, rituals and traditions hold a significant position in personal law.

⁶ (1994) AIR 710.

⁷ Section 2(d) of the Maintenance and Welfare of Parents and Senior Citizens Act,2007

⁸ (2016) 9 SCC 455

⁹ 56 (1994)DLT 716,1994 (31) DRJ 564.

¹⁰ Session Case No.:77/13.

ISSUES BEFORE THE COURT:

A Division Bench of the Gauhati High Court decided a reference made in Sri Bhaskar Das V. Smti. Renu Das, where the following questions had been posed for consideration:

1. Whether respondent (the wife) subjected the petitioner (the respondent) to cruelty and deserted him ?
2. Whether the petitioner is entitled to a decree of divorce ?
3. Whether the averments, accusations and character assassinations of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1)(i-a) of the Act?

RATIO OF THE COURT:

1. The Family Court dealt with both the issues together and dismissed the suit and rejected the prayer of the husband for decree of divorce.
2. It has been observed by the court that the appellant husband adduced his evidence as PW1 and his evidence –in-chief stated that since after a months of marriage between the appellant and the respondent, the behavior of the respondent wife was acrimonious towards the appellant and the members of the family. The respondent wife started to blame the appellant husband as medically unfit. Because of the appellant husband she was unable to conceive. The Appellant stated that there was constant fight by the respondent and she refuses to take part in the household's works.
3. The appellant further stated that in the middle of June, the respondent wife insisted that she does not want to live with the appellant husband and abstain herself from wearing "sakha" and "sindoor".
4. Under the custom of Hindu Marriage, a lady who has entered into marriage according to Hindu rituals and customs, and which has not been denied by the respondent in her evidence, her refusal to wear 'sakha and sindoor' will project her to be unmarried or signify her refusal to accept the marriage with the appellant.
5. The position of law with regard to issue 3 has come to be well settled and declared that leveling disguising accusations of unchaste and indecent familiarity with a person outside wedlock and allegation of extra martial relationship is a grave assault on the character, honor, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. The court find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible.

Thus, it is clear from the above that appellant has a ground for grant of decree of dissolution of marriage on the ground as mentioned in Section 13(1)(i-a) of the Hindu Marriage Act, 1955. The case set up by the appellant seeking decree of divorce on the ground of cruelty can be established. As leveled by the respondent wife against the appellant husband, it cannot be accepted that no cruelty has meted on the husband.

DECISION OF THE COURT:

1. On 19th June 2020, the Division Bench of Chief Justice Ajai Lamba and Justice Soumitra Saikia of the Gauhati High Court gave the verdict. The court decided that the judgment

delivered by Court of District Judge, Dibrugarh on 15th December 2018 will be set aside and a decree of divorce will be granted.

2. According to the Maintenance and Welfare of Parents and Senior Citizens Act 2007, every child including son mandatorily needs to look after their parent. The Court held that the wife abstain her husband from serving his parent and family member which is a form of cruelty.

3. In this case the court observed that the appellant Bhaskar Das stated that his respondent wife refused to wear "Sakha" and "Sindoor" as form of non-acceptance of marriage. As the marriage was conducted according to Hindu traditions and the necessary customs are required to followed. As per Hindu Marriage Act 1955, Hindu Marriage is both a sacrament and a contract. Hindu Marriage is the amalgamation of both traditions, rituals and some legal rules.

4. The Hon'ble High Court also stated that "Such acts of lodging criminal cases on unsubstantiated allegations against the husband and /or the husband's family members amount to cruelty as held the Supreme Court ". The Court also said that the wife can pray for alimony, beyond Rs 3,000/- sustenance.

5. The Division Bench of Gauhati High Court observed that the Family Court has completely ignored the facts that the wife has compelled her husband not to perform his statutory duties towards his parents under Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and asserted that such act is sufficient to be construed as an act of cruelty.

6. The Bench did not made it mandatory to wear "sakha" and "sindoor" to legitimize their marriage.

CONCLUSION:

In the era of 21st Century, the judgment like sakha sindoor take our progression back to 100 years. No doubt a Hindu married woman is expected to wear bangles, sakha, sindoor, mangalsuta as defined under customs, tradition etc, but her trust is not subjected to it. As we still reside in patriarchy society and it will take some time to develop. For that time being girls and woman need to have patience. Review Petition was also dismissed which was filed challenging the controversial verdict. The Hindu Marriage Act,1955 does not talks about the provision of sakha and sindoor. All these things should be a matter of choice for woman. The Judgment is partial and against the right to equality.

