

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.808 of 2012

Smt. Rakhi Kumari @ Soni Wife of Sri Brij Nandan Ram, Daughter of late Tohan Ram, C/o Raj Kishore Prasad. Veterinary College Campus Quarter No. D/75, Kanke, P.S- Kanke, District-Ranchi State of Jharkhand.

.....Opposite Party No.1/APPELLANT

Versus

1. Sri Brij Nandan Ram, Son Of Sri Prasad Ram, Resident of Village Nimara, P.O- Panditganj, District Patna, at present posted as teacher Middle School Bhagalpur, P.S.-Lapung, District-Ranchi.

.....APPLICANT/RESPONDENT 1st SET

2. Sri Dayanand Prasad, Son Of Kamla Prasad, Resident of Magadh Colony, Gaya, P.S. Magadh medical college, District Gaya.

.....Opposite Party No.2 /RESPONDENT 2nd SET

Appearance :

For the Appellant : Mr. Binod Kumar Singh, Advocate.
Ms. Vagisha Pragya Vacaknavi, Advocate.
For the Respondents : Mr. T.N. Mattin, Sr. Advocate
Mr. Sunil Srivastava, Advocate.
Mr. Prem Kumar Verma, Advocate.

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 03-04-2015

Heard learned counsel for the appellant
wife and the counsel for respondent husband.



2. This appeal has been filed by the wife assailing the judgment dated 6th October, 2012 passed by Principal Judge, Family Court, Patna in Matrimonial Case No. 53 of 2005, whereunder matrimonial case filed by the respondent under Section 13(1)(i)(i-a) of the Hindu Marriage Act, 1955 has been decreed on contest and the marriage between the husband and the wife solemnized on 19.05.2002 has been dissolved by decree of divorce on the ground that the wife was in adulterous relationship with Opposite Party No. 2, her elder brother-in-law. In this connection, learned Principal Judge framed issue Nos. 3, 4 i.e. as to whether Opposite Party No. 1 is living an adulterous life with Opposite Party No. 2 and if the answer is affirmative, such relationship is cruelty towards the husband. Issue Nos. 3, 4 have been discussed by the court below in Paragraphs 9, 10, 11, 12, 13, 14 and 15 of the impugned judgment in the light of the evidence of the husband, P.W. 1 and the wife, O.P.W. 3 and other witnesses.

3. It is submitted on behalf of the appellant that the findings recorded by the trial



court does not conclusively prove that wife lived in adulterous relationship with her brother-in-law, Opposite Party No. 2. The wife appeared, denied the allegations by filing written statement and also appeared as a witness but Opposite Party No. 2 neither filed any written statement nor appeared as a witness in the proceedings. Though the court below appraised the evidence of the witnesses in the paragraphs noted above, counsel submitted that the aforesaid evidence does not clinch the issue against the appellant and the finding should be set aside.

4. In order to enable the appellant to reinforce the aforesaid submission, we under our order dated 09.02.2015 directed the parties to appear before Director, Forensic Science Laboratory, Ranchi on 24.02.2015 so that D.N.A. examination of the appellant wife, Respondent No. 1 husband and the girl child born out of the wedlock is conducted by collecting blood sample. Collection of the blood sample was not possible because of technical difficulties, those difficulties were brought to our notice by filing I.A. No. 2135



of 2015, copy whereof was served on the counsel for the appellant wife and this Court under order dated 30.03.2015 permitted the appellant to file reply to the said I.A. observing that in case wife does not choose to file her reply, matter shall proceed. Till date reply to the said Interlocutory Application has not been filed by the wife and when the matter was taken up for hearing, learned counsel for the wife categorically submitted that she is not ready to furnish her blood samples together with the blood sample of her daughter as according to her, D.N.A. examination of the husband respondent, wife and the child born to them is not necessary at all and the matter should proceed in the light of evidence available without such examination.

5. In our opinion, the scientific evidence to conclusively clinch the issue of adultery in the facts and circumstances of the case would have been the D.N.A. test report for which we passed order dated 09.02.2015. Initially, there has been no opposition by the wife to the order dated 09.02.2015, whereunder we directed

the parties including their daughter to appear for giving blood samples for obtaining D.N.A. test report. Till date the wife has not filed any petition for recall of the said order. However, during hearing of this appeal today learned counsel appearing for the wife has objected to the said order asserting that she is not agreeable for subjecting herself, child to D.N.A. examination.

6. Appellant wife having objected to subject herself and the child for D.N.A. examination, we, placing reliance on the judgment of the Supreme Court in the case of Dipanwita Roy Vs. Ronobroto Roy (2015) 1 SCC 365 invoke Section 114(g) of the Evidence Act, proceed to draw an adverse inference against her, accordingly, affirm the finding recorded by the court below in connection with Issue Nos. 3, 4.

7. The appeal is dismissed.

(V.N. Sinha, J)

(Ahsanuddin Amanullah, J)

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