

1958

*Present: Gunasekara, J., and Pulle, J.*U. RASHEEDA, Appellant, *and* USOOF DHEEN, Respondent*S. C. 1/1957 Quazi Appeal**Muslim law—Fasah divorce—False allegations of adultery—Inference of cruelty.*

Under Muslim law a husband who habitually makes false allegations of adultery against his wife is guilty of cruelty. Such cruelty is a valid ground for a Fasah divorce.

APPEAL from an order of the Board of Quazis.

D. S. Jayawickreme, Q.C., with *A. M. Ameen*, for the applicant-appellant.

Respondent in person.

Cur. adv. vult.

September 29, 1958. PULLE, J.—

The appellant in this case, Ummu Rasheeda, instituted an action in the Quazi Court of Kurunegala praying for a dissolution of her marriage with one O. V. Mohamed Usoof Dheen, who is the respondent to the appeal. On 7th January, 1956, the Special Quazi appointed to hear the action granted her a Fasah divorce on the ground that, by habitually making false allegations of adultery against the appellant, the respondent was guilty of cruelty. The respondent appealed to the Board of Quazis under section 60 (1) of the Muslim Marriage and Divorce Act, No. 13 of 1951, who by their judgment of 22nd December, 1956, set aside the Special Quazi's order. The appeal by the wife seeking to have the order of the Special Quazi restored comes before us after the leave of this court had been obtained. The facts relating to the ground of cruelty on which the wife succeeded before the Quazi are within a comparatively narrow compass and we are, fortunately, not called upon to wade through a mass of evidence placed before the Quazi by the husband to meet two other charges made against him, namely, that he maliciously deserted her and that he failed to maintain her. The concurrent findings on these two charges by the Quazi and the Board of Quazis in favour of the husband are not challenged. The main question we have to determine is whether the Board in the exercise of their appellate jurisdiction were justified in setting aside a finding of fact in favour of the wife.

The charge of malicious desertion was withdrawn by the wife during the course of her evidence. The charge that the husband had failed to maintain the wife was held by the Quazi to be not proved. On this issue be said,

“ The evidence would show that the respondent had done his best to maintain his family and the evidence on respondent's behalf on the question of maintenance is so overwhelming and convincing that the allegation of non-maintenance, I hold, is not proved ”.

The husband could on this finding claim that the wife's evidence on another material issue was unworthy of credit and that, therefore, the trial Judge had, on the charge of cruelty, to direct himself on the basis that her evidence should not be acted upon unless corroborated in material

particulars. Even, otherwise, this would have been a wise precaution. We have, therefore, to see whether the learned Quazi appreciated the need for corroborative evidence and whether he had misdirected himself by treating evidence as corroborative when in fact it was not.

It is implicit in the judgment of the Quazi that he well appreciated the need for corroborative evidence. The wife called three witnesses in support of her case that the husband had made unfounded allegations of adultery against her. They were C. M. S. Shahabdeen, her elder brother, and C. M. S. Saheeda Bee, her sister, and one A. A. Majeed, a relation. The Quazi said in effect that if the wife's case rested on her own evidence and that of her witnesses he would "gladly" have dismissed the suit. He went on to say that the topics on which the husband questioned the wife and her witnesses and the manner in which he did so supplied the needed corroboration. He says,

"Respondent has argued that the onus of proving applicant's case is on her. I agree with him on this point but I cannot help mentioning here that he should have taken care not to himself discharge the onus cast on the applicant. Despite my warning him several times he insisted on putting questions which necessarily impaired his defence that he did not make allegations of adultery against the applicant."

Before dealing with some of the matters which called forth the remarks quoted above it is only fair by the Quazi to say that throughout the trial he appears to have been anxious not to come to a finding in favour of the wife, impelled no doubt by a desire to save the marriage, unless the evidence forced him to do so. He also gave the husband—who was in many ways more competent to conduct his case than the wife her own—the greatest possible latitude in presenting his defence. This has provoked criticism from the Board of Quazis but certainly it does not lie in the mouth of her husband to say that he suffered any prejudice. Further, an incident which is said to have occurred on the day of the wedding itself or the day after was spoken to with circumstantial detail by Saheeda Bee and Majeed. It appears that the husband insisted on the wife swearing on the Quran that a child of her sister Rasheeda was not her own. This incident which was said to have occurred thirteen years previously was not accepted by the Quazi as proved because there were contradictions in the versions. This again shows that he insisted on a high standard of proof before coming to any conclusion favourable to the wife.

Now what was the sort of questions which her husband put to the wife which influenced the Quazi to hold against him? He put to her that her own brother Shahabdeen had warned him that she was a "tough" girl, that her brother-in-law, Razak, the husband of Saheeda Bee used to enter her room "freely without a warning", that her own brother had alleged that she was friendly with Sameen, a cousin of

Razak, and that she was in the habit during her stay in Negombo of "entertaining" a "discarded" brother of the husband named Sally and that she "roamed" about as she pleased.

With all respect to the Board of Quazis we cannot agree with their view that the Quazi had misdirected himself in reaching a finding in the wife's favour on the issue of false accusations of adultery. The Quazi, as he was perfectly entitled to do, decided not to act on the wife's evidence unless corroborated. He thought that the witnesses called by her were her own relations and not disinterested and he thought it unsafe to look for corroboration in their evidence. But having regard to the form and substance of some of the questions put by the husband to the wife he came to the conclusion that they tended to shew that she was speaking the truth on the fact in issue in this appeal, whether or not the husband had made unfounded accusations of adultery. If accusations of adultery had been made, then without a doubt those accusations were false. The Board says in its order,

"There is no acceptable evidence which enables us to say that the appellant accused the applicant with the charge of adultery with any of these persons".

The acceptability of the wife's evidence by the Quazi depended on a number of factors of which he was in a better position to judge than the Board of Quazis. He adopted a mode of approach which erred, if at all, on the side of caution and with advantage to the husband but, nevertheless, invulnerable from the legal standpoint. Unless the Board could say that the wife's evidence on the face of it was incredible or that the circumstance which the Quazi relied on as affording corroboration could not in law be regarded as such, there was no justification for their disturbing his finding. In our opinion the Quazi had not misdirected himself on the evidence.

The Board has accepted the position that according to the principles of Muslim law it is cruelty for a husband to so conduct himself as to make the life of the wife miserable, even though such conduct does not amount to physical illtreatment. By this test the Quazi had ample evidence to find that the repeated allegations and insinuations of misconduct had made the life of the wife miserable. Her forbearance during a married life of ten years did not require her to treat lightly any further allegations against her. A breaking point was bound to be reached and she parted for good on the 18th May, 1953.

In our view this appeal should be allowed, the result of which is that the order of the Quazi will be restored. The wife will be entitled to the costs of appeal.

GUNASEKARA, J.—I agree.

Appeal allowed.