

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 7 January 2005

Date Signed: 1 March 2005

Date Determination Notified 10 March 2005

Before:

Mrs J A J C Gleeson (Vice-President)

Mr D Allen

Mr A E Armitage

Between

Appellant

and

Secretary of State for the Home Department

Respondent

DETERMINATION AND REASONS

For the Appellant: Mr R Ghaffar of Counsel
Instructed by Edward Ismail Solicitors

For the Respondent: Mr R Holmes
Home Office Presenting Officer

1. The claimant (the principal appellant) appeals with permission against the determination of an Adjudicator, Ms S B Kirvan, who dismissed her appeal against the Secretary of State's refusal to recognise her as a refugee and the setting of removal directions to Bangladesh.

2. Permission to appeal was granted on the basis that the Adjudicator accepted that the claimant had been a victim of domestic violence, though not of an acid attack, as she alleged. This appeal was listed as a potential country guidance case on the situation for victims of domestic violence in Bangladesh. The appeal had previously been remitted afresh. The first Adjudicator allowed the appeal and the Secretary of State appealed successfully on the basis that the Adjudicator had not considered sufficiency of protection or internal relocation (these matters are set out in the present Grounds of

Appeal and the Tribunal understands that the claimant may be concerned that having succeeded before the first Adjudicator, her appeal was dismissed on remittal).

3. Following CA [2004] EWCA All ER (D) 354, it is not enough for an appellant to disagree with the Adjudicator's findings of fact. There must be an error of law (including an error of fact at the level of perversity or *Wednesbury* unreasonableness. The Tribunal asked Mr Ghaffar to set out the error of law disclosed by his Grounds of Appeal. He indicated that ground 1 of the Grounds of Appeal should be treated as a recital. The issue for the Tribunal was whether women in Bangladesh who were subject to domestic violence constituted a particular social group. He relied upon the cumulative effect of the threats received by the claimant at her parents' home. She is still married to the abusive husband. He argued that the claimant would be unsafe at her parents' home, as they had repeatedly sent their daughter back to the home of her in-laws, or to her marital home.

4. For the Respondent, Mr Holmes argued that sufficient protection was available. It was not necessary under *Horvath* for that protection to amount to a guarantee. There had been no incidents of violence to the claimant at her parents' home, and there would be legal avenues and parental support available to her on return. If she chose to exercise an internal relocation option, her parents could assist her and she could simply move away from her husband.

5. The Adjudicator's reasoning was correct and sound. It displayed neither perversity nor irrationality and was supported by the objective evidence (CIPU Country Report October 2004, paragraph 6.81). On the particular facts of this case, the Article 3 and asylum thresholds were not reached: the claimant had shown her ability to engage State protection (BHRC letter) and the Bangladeshi State was willing to assist her. Paragraph 6.84 of the same CIPU Country Report indicated that shelters were available and paragraph 6.90 showed the actions being taken by the Bangladeshi Government to address this issue. Enforcement was weaker in rural areas but better in Dhaka. Free legal help was available from the BNWLA.

6. Further, some areas of Bangladesh were less conservative and did not tolerate domestic violence. The claimant's husband was concerned as to what people would say if he did harm her. He asked the Tribunal to dismiss the appeal.

7. In reply, Mr Ghaffar asked us to look at paragraphs 6.81 and 6.84 of the CIPU Country Report for October 2004. The police were manipulative and prepared to do 'deals' with the perpetrators. The claimant's view was that her husband had been worried what society would perceive, but still wished her harm. The Adjudicator had not addressed the police not wishing to help her.

8. The Tribunal reserved its determination for postal delivery, which we now give. We remind ourselves of the core facts which the Adjudicator accepted (he considered that there was some embellishment of the claimant's account at the hearing). The marriage was an unhappy one, and during the last year in Bangladesh (2002) the claimant was constantly coming and going between her parents' home and that of her

husband. She received quite severe injuries in August 2002 and a family friend advised her parents to send her out of the country. They paid an agent to achieve this.

9. Before leaving, she reported her husband to the police, saying that her husband desired to go to Kuwait and was beating her to make her bring a handsome amount of money from her father's house. Other persons had told her that her husband was planning to throw acid on her. She had attended the Bangladesh Human Rights Commission and complained of the same matters, the preceding day. The claimant also approached a women's organisation, which referred her to the police. She was staying at her parents' house and the police took a full note of her complaint, but the claimant did not stay in Bangladesh to see whether they would act to protect her.

10. The Adjudicator considered all the objective evidence to which we have now been referred, including the Dowry Protection Act, the Cruelty to Women Law, and the Women and Children Repression Prevention Act. He considered that domestic protection was available at the appropriate standard, that her parents would again assist, and that internal relocation was also an option. Bangladesh is a very large country; it has a population in excess of 129 million and a land mass of 57000 square miles. Freedom of movement is respected in the main (paragraph 6.58).

11. We looked at the passages in the CIPU for October 2004 to which the parties referred us, paragraphs 6.81-6.94, of which the material parts are set out below –

"6.81 The State party report to the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), dated 3 January 2003, comments: "Bangladesh is a gradually changing society where the position, status and roles of men and women have primarily been shaped by the stereotype of male predominance and authority over women." The report notes: "Traditional socio-cultural values and practices work against raising the status of women. Women still have limited opportunities for education, technical and vocational training, employment and activities." ... "According to the Constitution, women enjoy the same status and rights as men in terms of education, health, political process, employment, development processes and social welfare.

However, in practice, they do not enjoy the fundamental rights and freedom to the extent as men do. The unequal status of women in society and in public life is largely due to the fact of having unequal status in the family life. Women's lower socio-economic status, lower literacy, lesser mobility are some of the practical obstacles to the establishment of their fundamental rights."

The same report details recent initiatives both by the government and by NGOs to reduce discrimination and gender-based oppression. CEDAW, in its 'Concluding Comments' dated 26 July 2004, urged the Bangladesh Government to implement comprehensive awareness-raising programmes to change stereotypical attitudes and norms about the roles of women; CEDAW also expressed concern over the unequal status of Bangladeshi women within the family and the fact that personal laws, derived from religious precepts which are discriminatory to women, continued to exist in the country.

6.82 USSD 2003 notes:

"Laws specifically prohibit certain forms of discrimination against women, including the Dowry Prohibition Act, the Cruelty to Women Law, and the Women and Children Repression Prevention Act. However, enforcement of these laws was weak. The Women and Children Repression Prevention Act provides special procedures for

persons accused of violence against women and children. The law calls for harsher penalties, provides compensation to victims, and requires action against investigating officers for negligence or wilful failure in duty. An amendment to this act was passed on July 20 [2003], weakening provisions for dowry crimes and attempting to address the issue of suicide committed by female victims of acts of "dishonor."

6.83 USSD 2003 adds:

"In recent years, female school enrolment has improved. Approximately 50 percent of primary and secondary school students were female. Women often were ignorant of their rights because of continued high illiteracy rates and unequal educational opportunities. Strong social stigmas and lack of means to obtain legal assistance frequently kept women from seeking redress in the courts. Many NGOs operated programs to raise women's awareness of their rights, and to encourage and assist them in exercising those rights. The Government also expanded incentives for female education by making education free for girls up to grade 12 (approximately age 18) and using a stipend system from grades 6 to 12. By comparison, boys received free education up to grade five."

6.84 As noted in USSD 2003 *"Domestic violence was widespread, although violence against women was difficult to quantify because of unreliable statistics and societal inhibitions about reporting such violence. Much of the reported violence against women was related to disputes over dowries. According to human rights organizations, there were 261 dowry-related killings during the year [2003]...Incidents of vigilantism against women-sometimes led by religious leaders (i.e. via fatwas) - at times occurred, particularly in rural areas. These included punishments such as the whipping of women accused of moral offences. "*

The Bangladesh Daily Star of 14 August 2003 reported that the results of a study conducted by the United Nations Population Fund (UNFPA), titled 'Assessing male psycho-socio attitudes towards violence against women', were presented at a workshop in Dhaka on 13 August; the former deputy representative of UNFPA was quoted as saying: "Sixty-five per cent of Bangladeshi males think it is justifiable to beat up their wives, 38 per cent have no clear idea what constitutes physical violence and 40 per cent support keeping women socially dormant".

According to a report of the Canadian Immigration and Refugee Board dated 12 January 2004, a study reported by UNFPA's 'The State of the World Population' for 2000 found that 47 per cent of the women surveyed in Bangladeshi villages claimed physical abuse by their male partners. A State Party report to the UN Convention on the Rights of the Child (CRC), published 14 March 2003, notes that under the Suppression of Violence against Women and Children Act 2000 violence against a wife by, or on behalf of, a husband carries a penalty of 5-14 years imprisonment if injury is caused, and a maximum penalty of life imprisonment for causing or attempting to cause the wife's death. USSD 2003 states: "The Women Affairs Department ran six shelters, one each in the six divisional headquarters, for abused women and children."

6.87 ... *According to the State Party report dated 14 March 2003 to the UN CRC, the Suppression of Violence against Women and Children Act 2000 carries the death penalty or life imprisonment for rape if death or injury results or is intended. Attempted rape is subject to a penalty of 5-10 years imprisonment. Amnesty International's 2004 Annual Report (covering events of 2003) stated: "Women's rights groups blamed the low rate of convictions*

for violence against women on a lack of government institutions to support the victims and a lack of trained police officers to investigate the cases."

6.89 In March 2002, the Government enacted legislation to control the availability of acid and reduce acid violence directed towards women, but lack of awareness of the law and poor application limited its impact. The new Acid Crime Control Law provides for speedier prosecutions in special tribunals and generally does not allow bail."

6.90 The State party report to CEDAW dated 3 January 2003 confirms that two new laws were introduced in 2002 - the Acid Crime Prevention Act 2002 and the Acid Control Act 2002 - to restrict the import and sale of acid in open markets, allow for trials in acid throwing cases by a special tribunal (with a right of appeal to a higher court) to make the maximum punishment for acid throwing offences the death penalty and to provide for the treatment and rehabilitation of victims. The Canadian Immigration and Refugee Board, in a report of 12 January 2004, quoted NGO representatives to a 2003 meeting on violence against women as alleging that police, in return for money, had been charging perpetrators under the Women and Children Repression Prevention Act instead of the more severe Acid Control Act. In a statement by the Asian Legal Resource Centre to the UN Economic and Social Council, dated 10 March 2003, it was stated that the Bangladesh National Women Lawyers Association and the Bangladesh Acid Survivor's Foundation estimated that only 10 per cent of attackers were ever brought to trial. Further, that the total number of acid attacks against women was difficult to document because many cases went unreported for fear of reprisals."

12. It is clear from the CIPU that the Bangladeshi State takes the question of spousal abuse seriously and has acted to reduce and prevent violence to women. Although many women do not know their rights, this woman does and has not hesitated to contact the police. She has social support from her family and she has sufficient strength to make a fresh life away from her home village. If her husband were minded to cause her difficulties in future, the evidence shows that she could relocate, take shelter, or have him prosecuted. The standard of protection available meets the *Horvath* standard.

13. on the question of particular social group, we have been assisted by the careful analysis of the present jurisprudence in *HM (Somali women, particular social group) Somalia* [2005] UKIAT 00040 which is encapsulated in paragraph 22 of that determination –

"22. It is clear from the above that for the PSG requirement to be met in respect of women in a particular country, there must not only be a combination of measures of legal and societal discrimination; these must also reach a certain level and intensity: see paragraphs 65 and 79: 'What is striking about evidence in Pakistan was the widespread and intense nature of the discrimination'."

14. The objective evidence in Bangladesh is not as extreme as in Pakistan. The authorities are addressing the question vigorously, and whilst there is discrimination, we do not consider that it is at the *Shah and Islam* level. We do not find that the objective evidence establishes that women in Bangladesh are a particular social group.

15. We have considered whether the Adjudicator's determination is legally erroneous in its application of the objective evidence to the facts found. We find that it is not; the Adjudicator's determination is fully supported by the objective evidence and there is no error of law in her approach.

16. **For all the above reasons, the claimant's appeal is dismissed.**

Date: 1 March 2005

J A J C Gleeson
Vice-President