

In the Family Court sitting at Hastings

Date: 21 November 2018

Before:  
His Honour Judge Farooq Ahmed

**TK** Applicant

and

**SK** Respondent

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FACT FINDING APPROVED JUDGMENT

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21 November 2018

The findings

1. I make the following findings of fact:
  - a) In November 1994, the father had sexual intercourse with the mother against her wishes. This happened on numerous occasions throughout the relationship. On this occasion the father intended to make her pregnant so that he would know whether she was able to produce children. She had an abortion because sex outside marriage was disapproved of in her parents' culture.
  - b) In September 1995, whilst on honeymoon, as a form of sadistic control the father made the mother undress and sit naked on the bed with the cooling air conditioning on full while she ate her food. When the mother was no longer able to eat the food as it had become cold, the father slapped the mother hard on the face, causing a red mark.
  - c) In December 1996, the father had sexual intercourse with the mother against her wishes whilst J lay in a crib beside the bed. C was conceived as a result of this incident. The father told C that his mother had said that he was the result of father raping her. This information was likely to cause C emotional harm.

- d) During summer 2000, the father was shouting at the mother whilst he was drunk in front of the children. He smashed a drinking glass and pushed the broken glass into the respondent's face and cut her. The mother had to have stitches.
- e) In November 2005, the father had sexual intercourse with the mother against her wishes whilst AK was asleep in a cot in the same bedroom.
- f) From about July 2016, the father carried out a campaign to assault, emotionally harm and frighten the mother, including by assault carried out by himself or by instructing another, throwing sausages containing razor blades over the fence so that her dog would be seriously injured and by killing her cat and leaving its dead body on her doorstep. The father intended that the mother would be emotionally harmed by these acts, which were acts of exceptional cruelty.
- g) On 5 March, 2018 the mother suffered a terrifying attack and was seriously injured. She sustained extensive bruising, two cracked teeth and her migraines have become worse. It involved her being kicked in the head several times and being punched. The assailant used a weapon, namely a blade which caught her and scratched her face. This assault was carried out on behalf of father by an assailant whom he had instructed.

#### The child

- 2. The child is AK who is 13 years old. He lives with his mother.
- 3. There are two older children, J, aged 23 years and C, aged 21 years. C lived with his father, but now lives with his girlfriend.

#### The parties

- 4. The mother is SK, aged 43 years.
- 5. The father is TK, aged 50 years.

#### The representation

- 6. The mother is represented by Ms Sandria Murkin of counsel.
- 7. The child is separately represented by Ms Monica Ford of counsel
- 8. Ms Murkin and Ms Ford demonstrated very considerable skill and carried out effective cross-examination of the father who therefore faced formidable challenge to his case.
- 9. The father represents himself. He has done so effectively and politely.

10. I have taken into account Practice Direction 12J. Questions were asked on father's behalf by me, which he had prepared and sent me in advance. This was undesirable and unsatisfactory. The questioning could not be carried out with the same robustness and careful and thorough forensic preparation that a professional advocate acting on behalf for the father, with responsibility to him, would have done. I was not able to approach the questioning from the father's perspective as I do not represent him and must maintain independence at all times. I was in no way able to take place of his own advocate, had he chosen to instruct such advocate. I did what I could to encourage him to be legally represented but he declined, as is his right.
11. I was referred to the cases of *PS and BP* [2018] EWHC Civ 1987, *Hayden J and M and F* [2018] EWHC Civ 1720, *Williams J*. I take account of the difficulties discussed there in relation to litigants in person in these sorts of cases. *Williams J* also sets out a helpful and concise summary of the relevant law, which I rely upon and incorporate below.

#### The law

12. In order to decide whether alleged facts have been proved, the following points need to be born in mind as referred to in the guidance confirmed by the President of the Family Division in the *Matter of X (Children) (No 3)* [2015] EWHC 3651 at paragraphs 20 to 24. See also *Re A (A Child) (No 2)* [2011] EWCA Civ 12, [2011] 1 FCR 141, para 26.
13. The burden of proof lies on the person making the allegation, namely the mother. The father does not have to prove anything.
14. The standard of proof is the simple balance of probabilities. In other words, the court must ask itself whether it is more likely than not that the event occurred. This principle "must be applied with common sense."
15. Findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation. However, the court can have regard to the inherent probabilities. The court may have regard to circumstantial evidence and give it such weight individually or in combination as it considers to be justified.
16. The court must take into account all the evidence and consider each piece of evidence in the context of all the other evidence. The court invariably surveys a wide canvas.
17. The evidence of the parents is of the utmost importance. It is essential that the court forms a clear assessment of their credibility

and reliability and explains how and why their oral evidence was or was not given weight in deciding the alleged facts.

18. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress, and the fact that a witness has lied about some matters does not mean that he or she has lied about everything. If the lie was for an innocent reason, namely one that does not denote guilt, it may be ignored. However, if a lie was not told for an innocent reason, it may be used to support the truth of the allegations, provided that there is other supporting evidence (see *R v Lucas* [1981] QB 720).
19. Hearsay evidence may be admitted. The court should give it the weight which it considers appropriate. See the Children Act 1989 s.96(3); Children (Admissibility of Hearsay Evidence) Order 1993; *Re W (Fact Finding: Hearsay Evidence)* [2014] 2 FLR 703.
20. Much of the evidence before me is in the form of statements and other documents, including hearsay. I take these into account. I give weight to the police documents as they are likely to have been carefully recorded, there is no unfair motivation, they are independent and they are consistent with the mother's accounts.
21. In evaluating each parent's credibility, I have had regard to the totality of their evidence and how it fits in with other pieces of evidence, how consistent it is internally and with other items of evidence, motives for their behaviour and how they gave their evidence.

#### The allegations

22. These are set out in a schedule, but may be seen more comprehensively in the findings which I have made and set out at the beginning of this Judgment. Therefore, it is not necessary to repeat them here.

#### The evidence received

23. I heard oral evidence from the mother and the father. I have read the papers in the court bundle. I have seen various photographs produced by the father and the mother. I have watched the father's DVD of his police interview. I have not seen any video or transcript of the mother's interview as the police did not make it available.
24. At the start of the case, there was an application for an adjournment in order to make further attempts to obtain police disclosure of documents and other materials. That application was refused. The court agreed with the father, who wished to proceed on the evidence available. There is nearly always more evidence that could be obtained in a case. However, the court must act proportionately, consider the effect of

delay, consider how important the evidence sought is likely to be, have regard to the evidence which is already before the court, and consider whether the case may be justly and fairly determined without the missing evidence. I decided, taking into account all of those factors, that the evidence sought did not justify an adjournment.

#### The delay in the case

25. The contact order which the father wishes to enforce and which the mother wishes to vary by reducing contact is dated 26 October, 2015. The father's application to enforce the order was issued as long ago as 19 August, 2016. The matter was listed for a dispute resolution hearing on 10 January, 2017. A Guardian was appointed. On 5 March, 2018, mother was severely injured by an assault and therefore was unable to attend court. For the same reason, the Guardian was not able to meet with AK. The dispute resolution hearing was listed for June, 2018. Kent and Bedfordshire police were directed to disclose relevant information. That was not done. Eventually, the case was listed for a fact-finding hearing before me. Apart from one meeting, the delays have meant that the father has not seen his son for 2 ½ years, but that has partly been his own doing, particularly in arranging for his wife to be assaulted.

#### History

26. The parents' relationship began in 1994. They married in 1995. At that time, mother was 19 years of age and the father 27 years of age.
27. The parents separated in about 2011, the mother moving into a refuge. The father says that there was no need for her to have done that.
28. Father last had contact with AK in February 2017, at McDonald's. J and the mother were also present. Aside from that, the father has not had contact with AK face-to-face since 21.7.16.

#### The mother's case

29. The mother's case is that the father was controlling, abusive and physically violent on numerous occasions during their relationship and that he continues to abuse her even now in 2018. She says that this abuse extended to rape on many occasions.
30. An example of this is set out in the mother's account to the police at G59. She met the father in September 1994 and was allowed to go out for a couple of hours by her parents. That was part of the culture that she grew up in. She told the police that she had gone to the bed-and-breakfast that the father was staying in. He wanted to have sex but she did not. He flung her on to the bed and had sexual intercourse with her against her will. This was to be the first of many such events.

### The father's case

31. The father's case is the mother has made entirely false allegations against him which she has invented to try and stop him from having contact with AK. He says that he has not done any of the things that the mother alleges and that he would never do such things.
32. The father's denial should not be given less weight just because it is a simple denial. Denial is part of the evidential landscape to be taken fully into account. If the father has not done any of the things alleged, one has to ask what more he can do than to say that he has not done them. He doesn't have to prove anything.
33. In deciding whether the allegations are true or false, it is necessary to consider credibility of the mother and the father together with any supporting evidence as well as any evidence casting doubt on the allegations. The court considers all the evidence available to it.

### The father's case

34. The father makes some arguable points.
35. He says that the mother alleges that she was first raped in 1994 and yet went on to have a civil marriage ceremony in July 1995 followed by an Indian marriage ceremony in September 1995 and willingly went on honeymoon with him. He argues that she would not have done this had she been raped by him. However, she says that he threatened to tell her family that they had had sex outside marriage. That would have been strongly disapproved of by her parents and family.
36. The father says that the marriage was a happy one. He has produced an album of wedding photographs, which I have seen. They show a happy occasion. He asks whether that is something that someone would do if they been raped by the person they are marrying. Against that, the mother says that there were some good times. I weigh it all in the balance.
37. Further, he says that had the mother been slapped by him on honeymoon, she would have reported this to the authorities. He says that the explanation is that these events never happened. Against that, it can be very difficult to report such matters. It would have meant going out independently to report it. She may not have been able to use the phone. She may not have had the money to separate from father whilst abroad. There was little or no evidence of these matters, but in any event, she didn't feel able to report the assault on her.
38. There is no mention of rape in the mothers first statement, dated 12 September, 2016. The father says that he would have expected it to have been mentioned had it been true. She does not mention it until

her second statement, which is undated and is in the bundle at C68 to C87. She says that she didn't want to tell anyone.

39. The father argues the mother did not report the alleged rapes to the police until 2017. He says if they were true then the mother would not have waited 23 years. He asks why she did not report them in 2011 when she first fled the home. The father had sexual intercourse with the mother in December 1996 contrary to mother's wishes. As a result, she fell pregnant with C. The reason that the mother did not report the rapes in 2011 when she first fled home was that she did not want C to find out how he came to be born. Also, she did not report the abuse earlier because she did not know what the father would do if she told anyone. Once father had told C about her allegations of rape there was nothing for her to protect him from.
40. The father relies upon numerous text messages, for example, at C43 to C67 in which the mother repeatedly signs off with a kiss. He regards this as flirtatious and not something that she would have done had she really regarded him as an abuser. I find that the mother was not being flirtatious when she signed off emails with a kiss. It was just her way of signing off. The father is wrong to read anything into it.
41. The father says that the mother was comfortable in his presence at McDonald's in 2017 when they, A and J all met. He says that had he been an abuser there would not have been the seemingly happy occasion shown in the photographs that I have seen. One of them shows the mother smiling. He says that this does not fit with the image of him being an abuser and another being frightened of him. Photographs show a snapshot of a situation. They don't show the nuances or the words said, or how they were said. A person can put on a smile for a photograph, even if they are unhappy. Meeting in McDonald's was safe for the mother. It was a public place with lots of people around.
42. In respect of the allegation of a smashed glass in the mother's face, the father notes that there is no hospital or police record of such an incident. He says that that supports his case that there was no such incident. However, the absence of corroborative evidence is not evidence that the event did not occur. It is simply that there is no corroborative evidence. The mother says that the police wouldn't do anything. The mother did not need to invent such an incident if it was not true. I find it is true. There is no reason for the mother to have lied about this when she did not lie about the other allegations.
43. The father says the mother is not alleging that it was he who attacked her in March 2018. He denies absolutely that he had anything to do with that assault. He says that there is no evidence to connect him with it. He suggests that she may have done it to herself or that it was staged. He relies upon the police having decided to take no further action against him. He says much the same in response to the

allegations regarding earlier assaults on her in the grounds of her house, carving RIP on her door and her bins, the killing of her cat and the razor blades for the dog to ingest. He said that he was not shocked by the injuries because there had been so many times when the mother had made up things. He admitted saying in the police interview, after having seen what would be properly described as shocking photographs, that he hated the mother.

44. The father contends that the mother has a narcissistic disorder, which makes her make up things to draw attention to herself. He doesn't have any expertise to make such a diagnosis. His opinion evidence is therefore not admissible. Alternatively, it carries no weight. There is no expert evidence to support the father's contention that the mother has a narcissistic disorder. What is significant is that he makes that allegation.
45. The father's oral evidence was that he was shocked and devastated the allegations of rape and assault.
46. The father said that there had been no violence in the marriage and certainly nothing in front of the children. He accepted that there may have been shouting and pushing, but he regarded that to be normal in marriage. He accepted that the police may have been called to the house but could not remember.
47. The father said that the mother moved out as they were not getting on. They were constantly in debt. The mother was not prepared to go out to work. She was ordering things on catalogues and she was depressed.
48. In respect of the alleged campaign of violence and terror, referred to by the mother, the father says that he does not think any of these incidents happened. He wonders why there was no police follow through. The police never spoke to him about them. He says that the children did not say anything about it to him either.
49. The father admitted lying to the mother about his age before they were married. He told her that he was 23 because he wanted to be younger for her. He says that he maintained the lie for a couple of weeks.
50. The father admitted that he has a conviction for violent disorder and for a section 20 (Offences Against the Person Act 1861) offence of inflicting grievous bodily harm. The date of that conviction is 13 December, 1990, which was his stag night. He was convicted after a trial at the Crown Court and sentenced to 9 months' imprisonment on each count concurrent. He served 4½ months. The father told me that he was in a group which came into conflict with another group of young men. An altercation occurred between the two groups and punches were thrown. Someone in his group had a knife. The father punched someone and someone had a broken eye socket. He was punching

and landing punches. He says it was a crazy thing to do and he regrets it.

51. The father admits telling C that his mother had alleged that he was the product of rape. He said that he himself was devastated by the allegations and that he wanted C to know the lengths to which the mother was going.

### Analysis

52. I did not find the father to be a good witness. He was evasive and had his own agenda, needing to get his points across rather than answering the questions being asked. He was certainly very fluent and articulate. He tended to minimize and avoid difficult issues.

53. I watched and listened to the mother very carefully, as I did with the father. I found her to be a very convincing witness. She was plainly telling the truth about what had happened to her. She was upset and tearful for much of the hearing. That upset has continued during this Judgment when there would be no reason for her to put on a show. Some witnesses are able to show false upset at will. However, I do not think for a moment that this mother was pretending. During the main hearing and today, sitting behind screens, she had her eyes down for much of the time and was not able to see whether I was watching her. She was drawn into herself and was plainly uncomfortable with the situation in which she found herself. In the witness box, she was upset at appropriate moments. She struggled to get her words out through the upset. She was measured in her account. She was ready and willing to say what the father did not do as well as what he did do, for example, that A was not the product of rape. I find that she was honest witness who told me the truth on all important matters. I accept her evidence.

54. The father was quite domineering in evidence. He frequently spoke over others. He made them listen to him. He was fluent and articulate and superficially convincing. However, when the evidence is examined, serious flaws in his case are revealed.

55. The father is capable of using dishonesty to mislead others on important matters. He deliberately misled the mother by lying about his age when they were to be married. Although that was a long time ago, he did not appear to me to regret it or recognise that there was anything wrong with it. 8 years' difference at that age of 19 is substantial. That indicates that his attitudes to the truth have not changed. I find that if he wishes to mislead he will readily do so. I cannot trust his evidence to be truthful. I find that he has not told me the truth on important matters.

56. The father is capable of using serious violence. Although his conviction for inflicting grievous bodily harm is nearly 30 years ago, it lends some

limited support to finding that he is still capable now of being violent. It cannot be relied upon on its own, but it is part of the whole of the evidence.

57. The father hates the mother. He agrees that he said that in the police interview. It is a very strong word, but he used it and I find that he meant it. He said that he hates the mother, despite then having just seen shocking photographs of her injuries from the March 2018 attack on her. He is not, himself, shocked by the photographs. He showed no sympathy whatever for the attack on the mother, nor for the pain and suffering that she endured and continues to have from that day. I consider it to be very telling that he suggested that it may have been staged by her or even that she may have done it to herself. I would have expected him to say only that he agreed that she was telling the truth she had been attacked, but that it had not been anything to do with him. She was saying that it was not him, so he did not need to say she may have done it to herself. That he said that, is a window to the truth.
58. I find that the attack on the mother on 5 March, 2018 was arranged and instructed by the father. I am entitled to rely upon all the evidence, including circumstantial evidence to draw inferences and reach conclusions on the balance of probability. I will give my reasons.
59. The attacker knew the mother's name and called her by her name. That makes it unlikely that it was a random attack. The attacker did not use any racist language. That makes it unlikely that it was a racially motivated attack. The attacker used the phrase, "you think you are so fucking clever". That is a phrase I find the father used to use with the mother. I am not able to say how the attacker came to know that phrase, but it may have been mentioned by father when talking about the mother in saying "she thinks that she is so fucking clever". Quite apart from that, the words themselves are not the words that a random attacker would use. I say that because the words hold a context. They are clearly about something that the attacker thinks that the mother has done. I have considered the speculative possibility that someone in the father's family or a friend of his has independently and without his knowledge decided to teach the mother a lesson by assaulting her. However, there is no evidence of that whatsoever.
60. The attacker was not motivated by the valuables that the mother was carrying, as a robber would have been. He must have been motivated by something else. The most likely motivation is that he was instructed carry out the attack. He took her GPS tracker device. That was valuable only to her. Taking the tracker from her increased her vulnerability, which was the likely intention of the attacker and of the father. He did not take her purse, the mobile phone or the jewellery. Nothing of any value was stolen. Unless he was acting on the instruction of the father, it makes it an attack without motive.

61. Added to this evidence is the father's complete lack of compassion when shown the photographs of the injuries and when the incident was talked about.
62. I accept mother's evidence that she has no other enemies and cannot think of anyone else other than the father, who might have wanted to attack the mother in this way.
63. In his police interview, the father says that on 5 March 2018 he was at the police station. The attack had taken place at 7.30 am that day. He said that he looked at his watch at 3 pm that he would be on the camera at the police station. I suspect, but I am unable to find, that he intended this as some sort of alibi had the timings matched. However, I do find that he was trying to distance himself from the attack and minimise the risk of discovery of his involvement in it.
64. The attack on 5 March, 2018 follows on from a disturbing and frightening campaign of terror, which I find was carried out by the father.
65. Accepting the mother's evidence in her statement at C 72, I find that in 2016 the father telephoned the mother, threatening that if she carried on not letting him see AK, she would end up like the surprise she was going to get in the morning. The mother did not know what he meant the time. However, the next morning she woke to the horror of finding her cat dead on the front doorstep. It had either been it strangled or its neck broken. She now knew what the father's threat had meant. I would not have expected the father to respond to this allegation, as he did, by asking how the mother knew the cause of the cat's death.
66. I find that the dead cat was the father's demonstration to the mother of what could happen to her if she did not allow contact. There can be no other credible explanation for why anyone else other than the father would kill her cat and placed it on her doorstep, particularly as it directly followed the telephone call promising a surprise in the morning. I find that this was the father's response to the mother's stopping contact which she did after 21 July, 2016. She had been advised to do so by the social worker, AH, as may be seen from the social worker's email at C29 dated 11 August, 2016.
67. Having found that the father was responsible for killing the mother's cat, that makes it more likely that he was responsible for the other incidents. Each finding supports other findings. These included slashing of the tyres of mother's car, "RIP S" being etched into bins and carved into her front door and sausages containing razor blades being thrown over her garden fence for the mother's dog to eat. That continued the pattern of targeting the mother's pets to hurt her. There is no evidence that anyone else had any motivation to frighten the mother in this way. This conduct was in the cold, calculating and ruthless style of the father, which included the cat incident.

68. The father repeatedly said "if this incident happened." He was verbally underlining and emphasising the word 'if'. I find that he was trying to reduce the incidents to an absolute minimum, thereby seeking to protect himself from findings against him.
69. As part of the father's selfish dominant nature, I find that he had sexual intercourse with the mother without her consent on numerous occasions throughout the marriage. I make the findings sought by the mother in that regard.
70. I have reached that conclusion having been impressed by the convincing way in which the mother gave her evidence to me and to the police. She gives context and detail to a level that would be difficult to invent. She demonstrated appropriate upset. She was measured in her evidence. She came to court and had to speak to and in front of strangers about very personal sexual matters. That was clearly very embarrassing for her. She would not have put herself through that just to stop contact. She could have just relied upon AK having said that he did not want to see his father, he being of an age where the court would have to listen very carefully to his wishes and feelings.
71. In reaching these conclusions, I have considered very carefully the arguments put forward by the father, which I will further address now.
72. A major plank of the father's case is that he says that there was a good relationship between him and the mother. Adults are all too frequently abused by their partners and yet are committed enough to stay in the relationship. In this case, there are different or additional reasons. In November 1994, before the parents married each other, the father had sexual intercourse with the mother without her consent. She became pregnant. The father subsequently told her that he had wanted to make sure that she was able to have children before he married her. The mother wanted an abortion because she had had sex without marriage and it would have brought shame on her family to have a child then. The father used this as a way of forcing her to marry him. He said that he would tell everyone about the abortion if she did not marry him. The result was that the mother agreed to marry him. They were married in the UK on 22 July, 1995 and had an Indian wedding on 17 September, 1995. I accept the mother's evidence and explanation for why she married the father despite his assault on her. However, there must have been at least some willingness independently the mother to have gone through with the two weddings.
73. The father admitted that he told C that his mother had said that he was the product of rape. C was about 20 years old at the time. That was an irresponsible and unnecessary thing to have done. It was not child-centred and caused avoidable harm and upset. Once C knew of the rape, the mother decided to report it to the police. She had already told the social worker.

74. The father's actions have caused the mother serious physical and emotional harm, which is likely to have been sensed by AK, directly or indirectly. That may explain why he has said that he doesn't wish to see his father.

75. That is my Judgment and I make the findings set out.

His Honour Judge Farooq Ahmed

21 November 2018