N.M. Vs. B.S.

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Court : Delhi

Decided On : Mar-16-2016

Judge : Vipin Sanghi, The Honourable Dr. Justice S. Muralidhar &Amp;amp; Vibhu Bakhru

Appeal No. : M.A.T. App. 37 of 2009

Appellant : N.M.

Respondent : B.S.

Judgement :

Vipin Sanghi, J.

1. The present appeal under Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred as 'HMA') assails the judgment and decree dated 19.01.2009 passed in HMA 572/06 by Additional District Judge (ADJ), Delhi, whereby the learned ADJ, while allowing the petition under Section 13(1)(ia) of the HMA, has passed a decree of dissolution of marriage in favour of the respondent/husband, and against the appellant/wife.

2. The parties were married on 18.02.2001, in Haryana. A girl child was born out of the wedlock on 10.04.2002. The respondent/husband alleged that from the beginning of the marriage, the behaviour of the appellant/wife was strange and dominating. She did not want to live with the parents of the respondent and

pressurised him to move out of the matrimonial home. Thereafter, in September 2002, the parties along with the child shifted to a separate residence in Rohini, Delhi. It was alleged that the behaviour of the appellant did not change even after separating from the parents of the respondent. She refused do any household work. On 11.02.2003, when the respondent returned from the office, he found that the house was locked and the appellant had left. When he contacted the appellant, she refused to return to the matrimonial home and, subsequently, filed a complaint in the CAW Cell, Pitampura, Delhi on the allegations of retention of dowry articles and harassment by the respondent.

3. In the written statement filed by the appellant/wife, she denied all the allegations and stated that she was living along with her child at her brother's house. She further stated that the parents of respondent did not consider her at par with their status, and wanted to get rid of her. She was made to do household work till late night and was not given proper food. She also alleged that the respondent did not want to take the appellant with him to the matrimonial home. It is for this reason that he arranged rental accommodation in Rohini. She further stated that since February 2003, the rent of the rented premises was also borne by her parents. She moved out of the matrimonial house for her own and her child's safety.

4. After relevant issues were framed, both the parties led their evidence in support of their cases. The Trial Court on assessing the evidence brought on record, passed the decree of dissolution of marriage under Section 13(1)(ia) of the HMA.

5. The Trial Court came to the conclusion that the respondent-husband had successfully established the mental cruelty caused by the appellant, on the premise that she left the matrimonial home, repeatedly, without informing the respondent; levelled false charges of retention of dowry articles, and; by not understanding the responsibilities of a wife and daughter-in-law. Consequently, the marriage was dissolved between the parties. Hence, the present appeal.

6. Learned counsel for the appellant/wife submits that the allegations of the respondent were vague and devoid of material particulars. No specific dates were given by the respondent, on which the appellant allegedly left her matrimonial home without permission. The allegation made by the respondent in his divorce

petition, that the appellant used to go to her parents house on one pretext or the other, and the respondent had to bring her back to the matrimonial home was specifically denied in the written statement. In fact, the appellant only went to her parental home thrice during her matrimonial life, i.e. between 18.02.2001 to 12.02.2003, with the permission of the respondent, and the same is corroborated with the statement of the respondent. Moreover, the appellant was not even cross-examined on the said allegation, and the learned Trial Court has failed to appreciate the fact that the said allegations have not been proved on record by leading any cogent evidence.

7. Learned counsel submits that there was no allegation in the divorce petition with respect to a complaint made to CAW Cell in relation to the retention of dowry articles. He also submits that the complaint made to the CAW Cell is not premised on any falsified facts, since the respondent himself has admitted the retention of the dowry articles. In cross-examination, the appellant (RW-1), had submitted that:

"I have not received all my jewellery articles. Petitioner is still to hand over 3 of my rings and one gold chain."

(Emphasis supplied)

8. The respondent (PW-1) confirmed the said statement in his cross-examination by stating that:

"Presently I only have few gold items which were given in gift. I have in my possession my father and my mother ring, one chain and my gold ring."

(Emphasis supplied)

9. The statements of respondent (PW-1) prove that he was in possession of the dowry articles. Therefore, the view taken by the learned Trial Court to establish cruelty on the basis of alleged false allegations made in the complaint to the CAW Cell are untenable, specifically when no such allegation was pleaded in the divorce petition.

10. Learned counsel further submits that the allegation of the respondent that the appellant never took care of his ailing mother and avoided the household work, had been categorically denied in the written statement. In fact, she was burdened with household work immediately after the marriage. The appellant was not cross-examined in respect to this statement, and in the absence of evidence, the same cannot be considered as a ground for granting divorce on the basis of cruelty.

11. Learned counsel for the appellant further submits that the appellant stayed in her matrimonial home from 18.02.2001 to January 2002. In January 2002, while she was pregnant, the respondent compelled her to go to her paternal home, at Gurgoan, for getting medical treatment. The same was deliberately done by the respondent to avoid pre and post delivery medical expenses of the mother and child. It is further submitted that on 05.04.2002, the appellant was admitted for the delivery of the child by her parents in Sethi Nursing Home at Gurgoan. She gave birth to a female child on 10.04.2002 and was discharged from the hospital on 13.04.2002. The entire medical expenses of Rs. 40,000 were borne by the parents of the appellant. The respondent in his cross-examination has conceded to this effect. He deposed that:

"I do not know the date of admission of the respondent to the nursing home. Vol: I was informed that she was admitted 2/3 days prior to delivery on account of low BP. I do not know when she was discharged from the hospital. I do not know the quantum of medical bill at the time of delivery."

12. He further deposed that "I had handed over a sum of Rs. 20,000 to the respondent's brother Shri K.R. I had handed over this amount on 10.04.2002 in Sethi Nursing Home." However, in the divorce petition, he stated that he paid a sum of Rs. 20,000 to the mother of the appellant, in presence of her brothers KR and OP. It is evident from the aforementioned statements that contradictory stand has been taken by the respondent. KR (RW-2) in his cross examination deposed that "It is wrong to suggest that the petitioner had paid a sum of Rs. 20,000. I never met him". Thus, the respondent had not been able to establish that he had made any monetary contribution in respect of the medical expenses incurred at the time of birth of the child.

13. Learned counsel submits that the appellant was not provided any medical care during her stay at the matrimonial home. On one occasion, the appellant felt pain in her stomach and was taken to a doctor. However, her condition did not improve from the treatment by the said doctor and, therefore, she requested the respondent to take her to another doctor. The respondent refused to do the same.

14. On the other hand, learned counsel for the respondent/husband submits that the conduct of the appellant was strange and dominating. She was not interested in living with the parents of the respondent due to which she pressurised him to move out of the matrimonial home. When the respondent showed reluctance to meet her wishes, she started misbehaving with the respondent and his parents. Furthermore, she refused to do any household work. Perpetual conduct of the appellant created tension in the matrimonial house. She would go back to her parental house on one pretext or the other. However, the respondent, in his effort to save his marriage, used to bring the appellant back to the matrimonial home.

15. Learned counsel submits that when the appellant conceived, she created unnecessary tensions in the family. She was taken to several doctors on many occasions, whenever she felt unwell. However, the appellant always complained about the competency of the doctors. He further submits that as per her wishes, the appellant was sent back to her parental house around 17.10.2001, so that she can be under the care of her mother.

16. Learned counsel submits that the respondent used to visit the parental home of the appellant to give her financial help. All the expenses of the delivery of the child were also borne by the respondent. It is further submitted that the amount of Rs. 20,000 was paid to KR (RW-2), the brother of the appellant, in presence of her mother and brother, OP.

17. It is further submitted that after the delivery of the child, the appellant came to the matrimonial home, only to return to her paternal home, and stated that she would only return to live with the respondent, if he separated from his parents. Consequently, the respondent rented a separate accommodation at House no. 305, Pocket B-6, Sector 7, Rohini, Delhi. The parties shifted to the said residence in September 2002. Even after that, the conduct and behaviour of the appellant did

not change at all. She did not prepare tea, or breakfast, for the respondent in the morning, and routinely did not prepare lunch or dinner for the respondent.

18. Learned counsel submits that on 11.02.2003, when the respondent returned from office, he found the rented premises locked and upon enquiry, found out that the appellant had left with her parents in the afternoon. When the respondent contacted the appellant, she refused to return to her matrimonial home. The respondent continued to pay rent for the rented premises till June 2003, since his clothes and house-hold goods remained in the said premises.

19. Learned counsel further submits that on 24.02.2003, a notice was received by the respondent from the CAW Cell, Pitampura, on the basis of false allegations levelled against him by the appellant. The said allegations of dowry demand, harassment and retention of dowry articles by the respondent are false and concocted, just to implicate him and his parents in frivolous cases. He further submits that the series of events from marriage onwards, to the point of making false complaints against the respondent, constitutes cruelty within the purview of Section 13(1)(ia) of the HMA.

20. I have carefully considered the submissions of learned counsels for the parties and perused the record laid in the case, including the impugned judgment. The judgment in this case was reserved on 15.07.2015. Thereafter, learned counsel for the respondent informed the Court Master that the respondent has since passed away. However, no application has been moved to bring the said fact on record. In any event, since the judgment had been reserved prior to the said reported development, it would not come in the way of the Court to pronounce the judgment.

21. The respondent/husband (PW-1), in his petition, has levelled allegations that the appellant's attitude was dominating and strange. She was not keen on living with the parents of the respondent. He also alleged that she refused to do any household work and refused to take care of his ailing mother. She created tension in the house and rushed to her parental house on many occasions. The said allegations were reiterated by the respondent in his affidavit in evidence towards examination-in-chief and the same are corroborated with the testimony of RK (PW-

2). No suggestions were put to the respondent with a view to deny these allegations, in his cross-examination. The appellant denied all the allegations and averred that she was always harassed for bringing insufficient dowry. She further alleged that on 12.02.2003, the parties had a quarrel, and the respondent left the house to stay at a friend's house.

22. It appears that the learned Trial Court was impressed by the non-rebuttal of the said allegations by the appellant and held the same to be an admission on part of the appellant. In my view, it was not incumbent upon the appellant to rebut the allegations by cross-examining the respondent, specifically when the series of allegations which had been made the grounds to seek divorce on the basis of cruelty, are without any dates or specific time in which they occurred. With respect to the allegation that she did not prepare meals, and that the respondent used to bring the food from a dhaba, the same cannot be believed in the absence of any evidence to this effect. The respondent did not produce the dhabewala, or any other person who may have seen the respondent regularly or frequently eat his meals from a dhaba. Secondly, the respondent claims that he found the house locked when he reached back from work on 11.02.2003, and upon inquiry found out that the appellant had left with her parents. Thereafter, he went to his friend's house, namely Vicky. It is pertinent to mention that the said friend was not produced as a witness in the present case by the respondent. It is also difficult to comprehend as to why the appellant, after leaving the matrimonial home on 11.02.2003, would return to Rohini to lodge a complaint in CAW Cell, PS Rohini. She could have filed the same in Gurgaon, where she allegedly resided with her parents. This casts a doubt on the version of the respondent that the appellant left the matrimonial home with her parents, behind his back, on 11.02.2003. In the absence of any cogent evidence with respect to this alleged misconduct of the appellant, the same cannot be said to have been established.

23. The learned Trial Court took note of the fact that there exists some discrepancy with respect to the dates. Paragraph 23 of the impugned judgment is reproduced as follows:

"23. and as per the reconciliation petitioner and respondent were given separate residence in Rohini. Here again there is discrepancy in the facts alleged by both the parties. Case of the petitioner is that petitioner took house in Rohini in September, 2002 whereas the case of the respondent is that she came back to the matrimonial home on 09.11.02 with her brother and when was shifted in Rohini by the petitioner. In the cross examination respondent was asked to give the proof of her stay at Gurgaon from the period September, 2002 till November, 2002 which she was not able to give. Even while residing at Rohini, allegations of petitioner is that respondent was not preparing food for him and it was petitioner who had to bring the food from the dhaba. Even all these facts although denied by the respondent in her written submissions, no cross examination has been done of the petitioner on these points."

24. A bare reading of the above paragraph shows that the learned ADJ has erred in law by placing the onus on the appellant to disprove the allegations of the respondent. It was for the respondent to prove his case, and not for the appellant to prove the negative. Moreover, the difference in the months of September and November does not strike at the root of the case. It is also well-settled that minor contradictions in the testimony of witnesses, which do not strike to the root of the case and are not material in nature, shall be ignored.

25. The respondent (PW-1) in his affidavit stated that:

"13. all the expenses of delivery were borne by me and I had paid a sum of Rs. 20,000/- to the mother of the Respondent in presence of her brothers Shri KR and Shri OP when I was accompanied by my father and Shri M.K.K. and his Wife Smt. U.K. to Sethi Nursing Home where my daughter was born."

(Emphasis supplied)

26. In cross-examination, he deposed that:

"I do not know the quantum of medical bill at the time of delivery. Vol: I had handed over the sum of Rs. 20,000/- to the respondent's brother Sh. KR. I had handed over this amount on 10.04.02 in Sethi Nursing Home."

(Emphasis supplied)

27. Thus, the case of the respondent that he had met the medical expenses towards birth of the child remained unsubstantiated. If he had met the expenses, he would have known the entire amount spent, and he would have been consistent about the person to whom the money was handed over by him.

28. The case set up by the appellant is that the medical expenses with respect to the delivery of the child were borne by her parents to the tune of Rs. 40,000. KL (RW-2) and SS (RW-3) corroborate the said stand taken by the appellant. On the other hand, the respondent (PW-1) deposed that he had paid the medical expenses to the tune of Rs.20,000. RK (PW-2) also stated so, though, he could not remember to whom the amount was handed over. A perusal of the record shows that bills (Ex. RW-3/P1 to Ex. RW-3/P19) were produced by the appellant. It appears that the expenses totalled to Rs. 38,620. Apart from the testimony of respondent's father, RK (PW-2), there is no evidence to suggest that the respondent handed over the sum of Rs. 20,000. Had the bills been paid by the respondent, firstly, he would have paid the same to the tune of Rs. 38,000/- and secondly, he would have produced the same from his own custody, which is not the case. Consequently, the case set up by the respondent that he met the expenses towards the delivery of the child does not inspire confidence in this Court.

29. On 24.02.2003, the appellant had made a complaint in the CAW cell alleging that the respondent and his family members had harassed the appellant and retained the dowry articles. Subsequently, an FIR no. 228/03 was registered. The respondent had approached the learned Trial Court for the grant of anticipatory bail in the said FIR. The learned ASJ while granting the said relief vide order dated 10.07.2003 (Ex. RW-1/P1), made the following observation:

"Sh. Mahendroo had handed over one gold necklace (sic.) along-with ear tops and one gold washed silver necklace (sic.), ear rings and one ring (sic.) before the IO. Smt. Neelam had identified the aforesaid ornaments as belonging to her. The IO is asked to seize above articles and to handover the copy of the seizure memo to Sh. Mahendru. It has been admitted by Smt. Neelam that the entire articles have

been returned by the applicants ."

(Emphasis supplied)

30. In cross-examination, the appellant (RW-1) deposed that:

"It is wrong to suggest that I had received all my dowry articles back and I admitted this fact at the time of grant of bail to the petitioner. I have seen Ex. RW-1/P1 and Ex. RW- 1/P2 wherein it is recorded as explained to me in Hindi, that I have admitted having received all my dowry articles. Vol: I have not received all my dowry articles, some of the jewellery still remains with the petitioner which includes three rings and one chain of gold."

(Emphasis supplied)

31. Perusal of the aforementioned order and cross examination of the appellant makes it abundantly clear that there is inconsistency in the stand of the appellant. The learned Trial Court has taken note of the said contradiction/inconsistency and other allegations with respect to demand of dowry and retention of articles by the respondent and his family members.

32. In my view, the learned ADJ, while returning his finding on the said aspect in favour of the respondent (in paragraph 25 of the judgment), was unduly swayed by the admission made in the ordered dated 10.07.2003 and the contradiction that came out in the cross-examination of the appellant. A perusal of the written statement and affidavit-in-evidence of the appellant shows that though she has accused the respondent of making dowry demands, and inflicting other forms of cruelty, but she had not alleged that the respondent was in possession of the dowry articles after the bail hearing on 10.07.2003. Therefore, there is no specific allegation with respect to the retention of dowry articles in her pleadings. It appears that when the appellant was cross examined on 26.09.2005, either she may not have remembered her earlier statement of 10.07.2003 (made in the Bail proceedings) or she may have subsequent to the passing of the order dated 10.07.2003 realised and believed that all her dowry articles had not been returned. Since there was no positive case made out by the appellant alleging the

respondent of cruelty on account of non-return of the dowry articles, the said contradiction cannot be a ground for grant of decree of divorce in the present case.

33. As far as other allegations of dowry are concerned, the appellant has led the oral evidence of herself as RW-1 and of her two brothers RW-2 and RW-3. RW-1 in her examination-in-chief stated:

"5. That in order to pressurise the deponent to insist her parents and brothers for the aforesaid articles or in the alternative a sum of Rs. 50,000/- to indemnify him in this regard the petitioner and his family members particularly her mother in law and unmarried sister in law used to quarrel with the depondent .

11. That ultimately on the morning of 12.2.2003 the petitioner clearly told the deponent to bring a sum of Rs. 30,000/- from her parents for the purchase of the scooter for him and on account of refusal of the deponent in this regard as her father is a retired Govt. servant "

34. On the said aspect the appellant/RW-1 was not cross-examined.

35. In his examination-in-chief, RW-2 stated:

"3. That in order to live properly in the matrimonial house the petitioner, his mother and sister were pressuring the respondent to bring a sum of Rs. 50,000/- from her parents to compensate them on account of inadequate dowry brought by her which was not acceptable to the respondent over which they got annoyed and started committing more and more cruelties upon her to achieve their ulterior motives and malafide intentions and designs for the lust of dowry and further had snatched the gold ornaments and valuable clothes from the respondent and had give 2-3 pairs of clothes for wearing and used to take the entire household work since morning upto late hours in night and also did not provide her sufficient food stuffs to eat and all the cruelties were being committed in a well planned manner by the petitioner in connivance with his family members thereby pressurising the respondent to bring a sum of Rs.50,000/- from her parents besides this they did not hasitate in causing physical and mental torture upon the respondent to attain

their illegal objectives and also used to treat respondent and the deponent as backward and below standard persons."

36. In the cross-examination of RW-2, he has denied the suggestion that his allegations were false. He also stated that:

"It is wrong to suggest that the petitioner or his family member had never made any demand or any article or money from me. (Vol. He had made a demand for scooter after one and a half month when I had visited their house and had also made demand when he along-with my sister had shifted from Rohini.). It is wrong to suggest that the petitioner or any member of his family never made such demand."

37. RW-3 in his examination-in-chief stated on the same lines as RW-2 on the aspect of dowry demands by the respondent and his family members. In his cross-examination, he, inter alia, stated:

" In my presence in January 2003 and on 4-4-2001, the petitioner and his parents had demanded Rs. 50,000/- along-with a scooter when sister of the petitioner was also available"

38. He denied the suggestion that he had deposed falsely. Therefore, it cannot be said that there was no evidence led by the appellant to substantiate the allegation of dowry demand by the respondent or his family members. Merely because the allegations may not be believed on appreciation of evidence, it does not lead to the conclusion that they are out rightly false. Thus, it could not be said that the making of allegation by the appellant, of the respondent and his family members demanding dowry, led to mental cruelty.

39. It is well-settled that normal wear and tear in a matrimonial relationship does not give a cause of action to the aggrieved spouse to seek dissolution of marriage. Some amount of conflict between two individuals is natural. The acts complained of as causing cruelty physical or mental, should be grave and weighty. To constitute a particular act, or a series of acts, as cruelty, the same should be obnoxious to, and destructive of the relationship between the couple. The

aggrieved spouse should entertain a genuine and reasonable belief, that he/she cannot reasonably be expected to put up with such conduct, and to continue to live with the other spouse. In my view, in the present case, the aforesaid yardstick is not met on examination of the allegations levelled by the respondent husband against the appellant wife.

40. In the light of the above discussion, in my view, the learned ADJ has seriously erred in appreciating the evidence of the parties led in the case, and has erred on facts in returning findings in favour of the respondent husband on the allegations of mental cruelty levelled by the respondent against the appellant wife. The said allegations have not been duly substantiated. Consequently, the impugned judgment cannot be sustained and is, accordingly, set aside. The parties are left to bear their respective costs.

Ordered accordingly.