

Ramlalli Vs. Soneylal

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Court : Madhya Pradesh

Decided On : Apr-10-1989

Reported in : I(1990)DMC518

Judge : S. Awasthy, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13(1)

Appeal No. : F.A. No. 104 of 1987

Appellant : Ramlalli

Respondent : Soneylal

Advocate for Pet/Ap. : Ku. Nagrath, Adv.

Disposition : Appeal dismissed

Judgement :

S. Awasthy, J.

1. This appeal has been directed against the judgment dated the 6th May, 1987, passed by the Fourth Additional Judge to the Court of District Judge, Jabalpur in Civil Suit No. 82-A of 1984, granting a decree of divorce.

2. The appellant was married to the respondent in the year 1969. A daughter Kumari Maya and a son were born to them during their wedlock. The son has died

during the period the appellant (herein) was serving the jail sentence for causing the murder of her mother-in-law on 8-3-1980.

3. The respondent had filed a petition under Section 13 of the Hindu Marriage Act (hereinafter referred to as 'the Act') on the ground of cruelty as well as desertion. The trial Court found the allegation of cruelty proved, while the ground of desertion was held not proved.

4. It is well settled that the desertion must be with intention to leave the matrimonial home for good. In the present case, it is not so. The appellant has been made to remain away from her husband due to the offence she had committed, for which she is undergoing the sentence. Therefore, the lower Court was right in holding that the ground of desertion has not been made out.

5. The second ground is that of cruelty. Section 13(ia) of the Act requires 'treated the petitioner with cruelty'. To amount to cruelty there must be such treatment of the petitioner which causes suffering in body or mind whether in realization or apprehension in such a way as to render cohabitation harmful or injurious having regard to the circumstances of each case, keeping always in view the character and condition of the parties, their status environments and social values, as also the customs and traditions governing them.

6. The legal conception of cruelty comprises two distinct elements--firstly, the ill-treatment complained of, and, secondly, the resultant danger or apprehension thereof. It would be inaccurate and liable to lead to confusion if the word cruelty is understood apart from its effect on the victim. The apprehension contemplated by the above legal conception is that further cohabitation will be harmful or injurious and not that the same or similar acts of cruelty will be repeated. Where the acts or conduct can be said to amount to cruelty it is immaterial that there is no danger of its repetition. The inquiry must be whether the cruel treatment established by evidence is of such a nature as to cause in the mind of the victim reasonable apprehension that it will be harmful or injurious to live with the other party. The more serious the original offence, the less grave need be the subsequent matters to constitute cruelty, for the subsequent acts must be looked at in the light of the earlier history from which they derive their significance.

7. What is cruel treatment must to a large extent be a question of fact or a mixed question of law and fact to be determined within the ambit of the rule and the accepted criterion. No dogmatic answer can be expected to the variety of problems which must continue to arise before the Court in this sort of cases and the law has no footrule by which to measure the nature and degree of cruel treatment which may satisfy the test of apprehended harm or injury. The conduct alleged must be judged upto a point by reference to the victim's capacity or incapacity for endurance in so far as that is ought to be known to the offending spouse.

8. The language of the clause is comprehensive enough to include cases of physical as also mental cruelty and cases where both the elements are present. Where physical violence is proved the test laid down in the section cannot present any particular difficulty. Even a single act of violence may be of such a grievous and inexcusable nature as by itself to satisfy the test of cruelty. On the other hand isolated acts of assault committed on the spur of the moment and on some real or fancied provocation may not amount to cruel treatment. The assault or assaults must not be viewed as isolated facts but in the proper setting and as an incident or incidents in a complicated series of marital relations. It would be relevant to have regard to any physical or mental strain under which the accused spouse may have been labouring. Difficulty sometimes may arise where the question is whether a number of minor acts or physical violence alleged are sufficient to amount to legal cruelty. This can only be determined by keeping in view the physical and mental condition of the parties, their age, environments, standard of culture and status in life. Allowance in judging of the language or conduct used by one spouse to another must be made for local and social habits. The principle is well established that cruelty might be inferred from the whole facts and matrimonial relations of the parties and atmosphere disclosed by evidence. A useful illustration of the application of the above principles is afforded by the case of *Dastane v. Dastane* (AIR 1975 SC 1534) decided by the Supreme Court.

9. Acts like the tearing of the Mangal-Sutra, locking out the husband when he is due to return from the office, rubbing chillie powder on the tongue of an infant child, beating a child mercilessly which in high fever and switching on the light at

night and sitting by the bedside of the husband merely to nag him are acts which lend to destroy the legitimate ends and objects of matrimony. Assuming that there was some justification for occasional sallies or show of temper, the pattern of behaviour which the respondent generally adopted was grossly excessive.

10. The conduct of the respondent clearly amounts to cruelty within the meaning of Section 10(1)(b) of the Act. Under that provision, the relevant consideration is to see whether the conduct is such as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for him to live with the respondent. The threat that she will put an end to her own life or that she will set the house on fire, the threat that she will make him lose his job and have the matter published in newspapers and the persistent abuses and insults hurled at the appellant and his parents are all of so grave a nature as to imperil the appellant's sense of personal safety, mental happiness, job satisfaction and reputation.

11. The inquiry therefore has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent. It is not necessary, as under the English law, that the cruelty must be of such a character as to cause 'danger' to life, limb or health or as to give rise to a reasonable apprehension of such a danger. Clearly, danger to life, limb or health or a reasonable apprehension of it is a higher requirement than a reasonable apprehension that it is harmful or injurious for one spouse to live with the other.

12. Applying the said principles, the conduct by the appellant of her mother-in-law, would amount to a cruelty to the husband respondent (herein) and he shall be entitled to a decree for divorce on that ground.

13. I, therefore, dismiss the appeal, but without any order as to costs.