

Badri Narayan Vs. Savitri

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Court : Madhya Pradesh

Decided On : Jan-29-2000

Reported in : II(2000)DMC552

Judge : V.K. Agarwal, J.

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

Appeal No. : First Appeal No. 11 of 1997

Appellant : Badri Narayan

Respondent : Savitri

Advocate for Def. : Archana Nagaria, Adv.

Advocate for Pet/Ap. : None

Disposition : Appeal allowed

Judgement :

V.K. Agarwal, J.

1. This appeal under Section 28 of [Hindu Marriage Act, 1955](#) (hereinafter referred to as the 'Act' for short), is directed against the judgment dated 4.12.1996 in Civil Suit No. 83-A/95, by Vth ADJ Rewa, whereby the petition of the husband/appellant under Section 13 of the 'Act', praying for decree of divorce against his wife-the

respondent, was dismissed.

2. Undisputably the marriage between the parties took place on 9.2.1985 at village Rajarwara according to Hindu rites and customs. The respondent/wife after marriage resided at her matrimonial home for sometime, and thereafter went back to her parents' house. In 1986 after 'Gauna' ceremony she came back to her matrimonial home.

3. The appellant/husband averred that his wife did not permit him to have marital relations with her on the pretext that she was not well. It was further averred that the respondent used to misbehave and threaten that she would commit suicide by self immolation or jumping into the well. On 15.4.1990 the respondent tried to commit suicide by consuming poisonous substance. However she was saved. The respondent also tried to administer poison to the appellant's mother on 12.3.1992, 14.3.1992 as also on 4.4.1992. The behaviour of the respondent as above, amounts to cruelty and the appellant/husband claimed that a decree for divorce may be granted to him.

4. The respondent resisted the application. She averred that the appellant's mother did not permit her to have marital relations with her husband-the appellant on the first occasion. However, when she returned back after 'Gauna' ceremony from her parents' home to the appellant, they had marital relations. The respondent denied that she tried to commit suicide or threatened to do so. She also denied that she administered poisonous substance to the appellant's mother. She has averred that the appellant and his family members used to demand dowry and asked her to bring a vehicle from her father and also money for establishing flour mill. When the respondent expressed her inability to do so she was beaten and maltreated. The respondent narrated the maltreatment as above to her brother, and went away to her parents' home; She remained in her parents' home for about an year, but nobody from her matrimonial home came to take her back.

5. It was further averred by the respondent that she went to the appellant's home to participate in the last rites of his grand-mother. The appellant and his parents again demanded vehicle and money. They used to manhandle and maltreat her. They also turned her out of their house. However, on pursuation of the neighbours,

she continued to live in her matrimonial home, during which she was continuously being assaulted and maltreated. Demand of dowry as above was persistently made during the above period, whereafter the respondent went away with her brother and continued to live in her parents' home for about an year.

6. It was also averred by the respondent that her father on being compelled by the appellant/husband and his family members agreed to give a vehicle to satisfy their demand. The respondent thereafter went again to her matrimonial home where she lived for about six months. During the above period she was not properly treated. The respondent then went to her parents' home alongwith her brother, where she stayed for about one year. The appellant's father and his uncle told her father that since the vehicle has not been given as agreed to by the respondent's father, they would not call the respondent back; upon this the respondent's father purchased a 'Luna Super' and handed it over to the appellant. The respondent thereafter went back to her matrimonial home.

7. It was further averred that after about two months, the appellant again demanded that a Television may be brought by her. When the respondent refused to accede to the above demand, she was again maltreated and beaten. Thereafter, the respondent went back to her parents' home to participate in her sister's marriage. It is further averred by the respondent that on 17.5.1992, she went to her matrimonial home alongwith her brother Ramlal. However, the appellant's mother did not permit her to enter the house; upon which she returned back. After three-four months thereafter on receiving information about the illness of the appellant's father, the respondent again went back to her matrimonial home alongwith her brother but, they were not permitted to enter the house. The respondent despite resistance by the appellant and his family members started living in another house of the appellant known as 'Chakki-wala Ghar'. The appellant continued to maltreat her. After living in the said 'Chakki-wala house' for some time, she went back to her parent's home.

8. The respondent has thus denied that she acted with cruelty. It was averred by her that in fact the appellant treated the respondent with cruelty. She, therefore, prayed that the petition of the appellant for divorce be dismissed.

9. Learned Trial Court framed issues as to whether the respondent by her behaviour and conduct harassed the appellant, and that she had left the matrimonial home without any justifiable reason. An issue was also framed as to whether the appellant deserves a decree for divorce under Section 13 of the 'Act'. The learned Trial Court after recording evidence held that the appellant has failed to prove his averments regarding cruelty. It was held that the appellant has demanded dowry and had left his wife-the respondent, without any justifiable cause. Accordingly, petition for divorce of the appellant was dismissed.

10. The learned Counsel for the appellant has urged that there is ample evidence on record that the respondent threatened and attempted to commit suicide. She also tried to administer poison to the appellant's mother. Her behaviour in the matrimonial home amounted to cruelty. Therefore, the appellant was entitled to a decree for divorce.

11. As against this, the learned Counsel for the respondent has supported the impugned judgment and has urged that the allegations made by the appellant regarding cruelty are general and vague in nature and were rightly rejected by the Trial Court. It was submitted that it was on account of demand of dowry and non-fulfillment thereof that the appellant treated the respondent with cruelty. It was also urged that the respondent has been living separately from the appellant, as she was compelled to do so by the appellant and his family members. It has, therefore, been submitted that as no ground for grant of decree of divorce was made out, the application of the appellant was rightly rejected by the learned Trial Court.

12. It is noticed that the appellant/husband has prayed for the decree of divorce on the ground of cruelty under Section 13(1)(ia) of the 'Act', as would be clear from averments in para 11 of his petition under Sections 13 of the 'Act'. The allegations are that the respondent on the pretext of her ill-health did not permit the appellant to have marital relations with her and had misbehaved with the appellant and his family members. She attempted and tried to administer poison to the mother of the appellant.

13. The appellant Badri Narayan (A.W. 1) has supported the above averments in his own statement. He has stated that the respondent after the marriage remained

in the matrimonial home for about ten or fifteen days. However, she did not permit him to have marital relations on the pretext that she was not well. After the 'Gauna' ceremony also, on similar pretext, she again did not permit him to have marital relations and went back to her parents' home. He has further stated that the respondent went away with her brother Dulichand, even though the appellant's grand-mother was seriously ill. She tried to commit suicide by consuming poison on 15.4.1990. He has also stated that the respondent used to threaten that she would commit suicide by poisoning herself or by jumping into the well.

14. It is further stated by the appellant Badri Narayan (A. W. 1) in para 6 of his statement that the respondent also administered poison to his mother. It may be noted that there is no challenge in cross-examination to the above statement of the appellant, that the respondent tried to administer poison to his mother or that she attempted to commit suicide and that she also used to threaten that she would do so. In view of the unchallenged statement as above it ought to have been believed. Moreover, the above statement has also been duly supported by his mother Chandrawati (A.W. 2) who has stated that the respondent tried to administer some deleterious substance to her on account of which, she fell ill. Similar is the statement of Sitaram Kashyam (A.W. 4), the father of the appellant. Vinod Kumar Vishwakarma (A.W. 3) who is an independent witness has also stated that the respondent tried to administer some poisonous substance to the appellant's mother.

15. The above allegations, have however, been denied by respondent. The learned Trial Court has observed in the impugned judgment, that since the doctor has not been examined, therefore, the above statements regarding administration of poison do not deserve to be believed. However, the above evidence of appellant could not have been disbelieved, as the appellant's statement in the above regard, was not only virtually unchallenged, but it was duly corroborated, as noticed above; and, therefore, should have been relied upon even if the doctor was not examined. The discrepancies in the statements of appellant's witnesses, as pointed out by the learned Trial Court do not appear to be vital in nature, and do not affect the substratum of the above statements. In fact, taking the broad view, it appears that there is nothing to hold that the appellant's witnesses are

speaking a falsehood, because there appears to be no reason for them to do so.

16. It may be noted in the above context that the appellant herself has admitted to have written letters marked as Ex. P/1 to Ex. P/6. In some of the above letters she has admitted her fault. This is especially clear from her letter Ex. P/3. The respondent has tried to explain away the fact that these letters were got written from her by exercise of coercion and undue influence on her. However, it may be noted that the above letters (Ex. P/1 to Ex. P/6) have been written on inland letters by the respondent on different dates. Moreover, letters (Ex. P/1 to Ex. P/4) have been ostensibly sent by the respondent from her parents' home and addressed to the appellant's father: That being so, it is inconceivable that the appellant or his family members could have got those letters written from the respondent while she was at her parents' home; either by beating her or by exercising coercion or undue influence on her, as she wants one to believe. In view of the above, it is clear that the letters written by respondent herself go to show that she was at fault and also admitted it. This further lends corroboration and support to the version given by the appellant/husband.

17. The learned Trial Court has also observed that the appellant demanded dowry from the respondent. However, that finding also does not appear to be justified. It may be noted that from para 22 of the application it would appear that the demand of dowry was made from the inception of the marriage. However, the respondent Savitri (NAW 1) in para 3 of her statement has stated that after the 'Gauna' ceremony for one month treatment of appellant and his family members was proper, but thereafter there was demand for dowry and maltreatment. Similarly her father Bhagatlal (NAW 3) has also stated in para 3 of his statement that the demand of dowry was made after the respondent visited her matrimonial home for the second time. However, in her reply there are no specific averments in the above regard; and in fact, it appears from the reply filed by the respondent, that demand of dowry was made from the inception of her marriage. Thus, above evidence led by respondent regarding demand of dowry is clearly contrary to her pleadings in the above regard.

18. It may also be noticed that the respondent Savitri (NAW1) and her father Bhagatlal state that Rs. 35,000/- was paid in cash by Bhagatlal to the appellant. However, it may be noted in the above connection that there is no pleading as above of the respondent. Therefore, in the absence of averments, the above evidence of payment of Rs. 35,000/- in cash is clearly stands belied and cannot be accepted. Obviously the respondent and her father have tried to state so, in order to substantiate demand of dowry as above, by the appellant. In fact, the Trial Court in para 23 of impugned judgment has also disbelieved the evidence adduced by the respondent, regarding payment of Rs. 35,000/-.

19. It may also be noticed that the appellants went away from her matrimonial home despite the serious ailment of the grand-mother of the appellant and despite the appellant asking her not to go away. It also appears from the appellant's evidence that the respondent was persistently creating trouble and tried to keep the appellant and his family members under great tension, and apprehension of some trouble starting from her side or that she might commit suicide. She also tried to administer deleterious substance to the appellant's mother. She also levelled false allegations of demand of dowry against the appellant and his family members. The above conduct of the respondent/wife would amount to mental cruelty.

20. In *V. Bhagat v. Mrs. D. Bhagat*, AIR 1994 SC 710=11 (1993) DMC 568 (SC), while discussing as to what would amount to mental cruelty, it was observed :

'Mental cruelty in Section 13(l)(ia) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already

living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively.'

21. Further it is also clear from the statement of the respondent that after the filing of the petition for divorce, she had instituted proceedings under the Dowry Prohibition Act, against the appellant and his family members, as would be clear from the admission of respondent Savitri (NAW 1) in para 14. The above proceedings, without prejudice to their merit, appear to be a counter-blast of the petition for divorce filed by the appellant. Other criminal proceedings were also initiated between the parties as is clear from the material and evidence on record.

22. In view of above, it is clear that the respondent's behaviour as above with the appellant and his family members was of continuous torture and harassment, and would thus, amount to cruelty in the foregoing circumstances of the case. It is also clear that the marriage between the parties has taken place in the year 1985, and that the respondent has been living mostly in her parents' home, and she only came intermittently to the matrimonial home for short intervals. Even during such short periods when the respondent lived with the appellant, she created trouble, causing tension, harassment and apprehension to the appellant and his family members. Parties lodged complaints against each other, which resulted in initiation of criminal proceedings. In view of above, it appears that the marriage between the parties has irretrievably broken without any chance of repair and restoration of relations between them.

23. The learned Counsel for the appellant has submitted that since the marriage between the parties has irretrievably broken as is clear from the foregoing circumstances, and as respondent treated the appellant with cruelty and the criminal proceedings are pending between them, it is not possible for the parties to live together and the appellant/husband is, therefore, entitled to a decree for divorce.

24. In *Smt. Kanchan Devi v. Pramod Kumar Mittal & Anr.*, AIR 1996SC3192=I (1997) DMC 257 (SC), the Apex Court on being satisfied that the marriage between the appellant and the respondent has irretrievably broken down and there was no possibility of reconciliation, granted a decree for divorce. Similarly in *Smt.*

Chanderkala Trivedi v. Dr. S.P. Trivedi, (1993) 4 SCC 232=1 (1993) DMC 135 (SC), it was observed that since the marriage was practically dead as from cruelty alleged by the husband and in view of the allegations levelled against the wife by the husband, it was held that the marriage of two cannot in any circumstances be continued any further. Therefore, the appeal of the wife against the decree for divorce granted in favour of the husband, was dismissed with certain terms enumerated therein.

25. Similar considerations prevailed with the Apex Court in V. Bhagat v. Mrs. D. Bhagat (supra), in which the Court granted the decree for divorce holding that the marriage between the parties has broken down irretrievably and there is no chance of parties coming or living together.

26. In the instant case also, not only the mental cruelty inflicted by the respondent/wife stands established but it also appears that the marriage between the parties has irretrievably broken without any change of restoration of relations between the parties. In the circumstances, the appellant/husband is entitled to a decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act.

27. Accordingly, this appeal is allowed. The impugned judgment and decree dismissing the petition for divorce of the appellant, is set aside and the petition for grant of divorce by the appellant/husband is allowed. The decree for dissolution of marriage between the parties is granted. Parties shall, however, bear their own cost of this appeal.