

Sumitra (Smt.) Vs. Luna Ram

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Court : Rajasthan

Decided On : Oct-04-2006

Reported in : RLW2007(2)Raj958

Judge : R.S. Chauhan, J.

Appellant : Sumitra (Smt.)

Respondent : Luna Ram

Advocate for Pet/Ap. : Mr. M.K. Jain

Disposition : Appeal dismissed

Judgement :

R.S. Chauhan, J.

1. The dispute between the wife and the husband, the appellant and the respondent, respectively has brought the parties before this Court. The appellant-wife has challenged the judgment dated 30.8.05 passed by the District & Sessions Judge, Jhunjhunu whereby the respondent-husband has been granted a decree of divorce under Section 13(1)(1a) of the Hindu Marriage Act, 1955 (henceforth to be referred to as 'the Act', for short).

2. The brief facts of the case are that the appellant-wife and the respondent husband were married in 1991 at Jhunjhunu in accordance with the Hindu rites

and customs. During the wedlock a daughter was born to the couple. However, the child expired the very next day. During the course of marriage difference arose between the husband and wife, which eventually led the husband to file a petition under Section 13(1) of the Act. The said petition for divorce was filed on the ground of cruelty and adultery on the part of the wife. According to the husband, his wife was extremely rude not only to him, but also to the other family members. Whenever he went out for a job, the wife would take away the utensils, jewellery and the money belonging to the family and leave the matrimonial home without the permission of the husband or of her in laws. She would deposit the money, the utensils and the jewellery at her parental place. Whenever the husband would enquire about these activities, she would quarrel with him and would curse him in front of the neighbours. She also filed a false case under Section 498-A of Indian Penal Code. The falsity of the case is apparent from the fact that after a thorough investigation, the police submitted a negative final report. The wife did not pursue the case thereafter. He further alleged that despite the caste Panchayat, which had directed the wife to resume cohabitation with him, she still did not live with him. In accordance with the decision of the Panchayat, he had paid Rs. 25,000/- but eventually the said money was returned back to him. Moreover, the wife had also filed a case for maintenance wherein Rs. 30,000/- were paid by the husband as full and final settlement of the maintenance required by the wife. Furthermore, he claimed that the wife was staying away from him for the last four years. Lastly, according to him on two occasions he had caught his wife in compromising poses with perfect strangers, therefore, she had committed adultery.

3. On the other hand, the appellant-wife filed her written statement and denied the averments made by the plaintiff-husband. According to her there was constant dowry demand made by the husband and his family members. Since she could not meet out the dowry demand, she was subjected to physical and mental torture by the husband and his family members. Therefore, she had no option but to leave the matrimonial home. She denied the fact that she was ever cruel to the husband or his family members or that she had ever committed adultery with strangers. On the basis of the pleadings, the learned Judge framed four issues. In order to support his case the respondent-husband examined himself as AW 1 and further examined three more witnesses. In order to substantiate her case, the appellant

examined herself as NAW 1 and her mother Jeevni as NAW 2. After going through the oral and documentary evidence the learned Judge, vide Order dated 30.8.05, granted divorce on the ground of cruelty, but he did not believe the story about the alleged adultery committed by the appellant. Hence this appeal before this Court.

4. Mr. M.K. Jain, learned Counsel for the appellant, has argued that vague allegations of cruelty have been levelled against the appellant. But, such ambiguous allegations cannot form the basis for grant of divorce. Moreover, it is the husband and his family members who were treating the wife with cruelty. Repeatedly, she was assaulted for not fulfilling their demands of Rs. 25,000/-. It is only because of the constant assaults and demands that the wife had filed a criminal case against the inlaws and the husband. Moreover, the trial Court had taken cognizance over the protest petition filed by the appellant against the negative final report. According to the learned Counsel the husband has also committed cruelty on the wife by leveling unfounded allegations of adultery against her. Hence according to the learned Counsel for the learned Judge has erred in appreciating the evidence.

5. On the other hand, Mr. D.V. Tholia, the learned Counsel for the respondent, has argued that the allegation of cruelty is well established not only by the testimony of independent witnesses like AW 3 and AW 4, but also by the fact that a false case had been filed against the husband and his family members. Moreover, the appellant had also filed a false case before the District Womens Development Tribunal, Jhun-jhunu. Because of these petitions, his family was humiliated in the society. Moreover, the shifting stand of the wife clearly proves that she is not willing to stay with the respondent husband. Lastly, that the couple has been staying away from each other for the last four years and there is no possibility of any reconciliation between the two. Hence he has supported the impugned order.

6. We have heard both the learned Counsels, have perused the record and have examined the impugned judgment.

7. The Hon'ble Supreme Court in the case of A. Jayachandra v. Aneel Kaur : AIR 2005 SC534 has elaborately dealt with the concept of cruelty. The Apex Court held as under:

the expression 'cruelty' has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouses is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the act or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

The expression 'cruelty' has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional, if it is physical, the court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the inquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference

to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. (See *Shobha Rani v. Madhukar Reddi*).

To constitute cruelty, the conduct complained of should be 'grave and weighty' so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than 'ordinary wear and tear of married life.' The conduct, taking into consideration the circum-stances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions, it is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

The court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person

would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.

The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighted from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hypersensitive approach would be counterproductive to the institution of marriage. The courts do not have to deal with ideal husbands and ideal wives. It has to deal with a particular man and woman before it. It ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court. (See N.G. Dastane (Dr.) v. S. Dastane.)

8. Moreover, in the case of G.V.N. Kameshwara Rao v. G. Jabilli : [2002]1SCR153 , the Hon'ble Supreme Court had clearly held that false police complaint and consequent loss of reputation and standing in society at the instance of one's spouse, would amount to cruelty.

9. The respondent husband, as AW 1 has narrated the events of cruelty meted out to him and his family members. According to him, he has been verbally abused by the appellant wife in front of the neighbors. His family has been humiliated by the false complaint lodged with the police and with the District Woman Development Tribunal. Moreover his wife has taken away money, jewellery and utensils from the matrimonial home and given them to her parental family. In view of the repeated acts of cruelty, he finds it impossible to live with the appellant. His testimony has not been demolished in the cross-examination. In fact, it has been

corroborated by his father's testimony as AW 2, Shadi Ram and by the testimony of the independent witnesses AW 3, Balu Ram, and AW 4 Khairati Ram. There is no reason for this Court to doubt the testimonies of the independent witnesses and of the respondent's father.

10. Even the learned Judge has noted that the appellant is in the habit of leveling false charges against the respondent husband and his family members. She is also prone to change her stand. She had lodged a criminal report against the respondent and his family members. In her testimony she clearly admits that a negative final report was filed by the police. But, she does not state that she had filed a protest petition against the negative final report. Although Mr. M.K. Jain and claimed, during the course of the arguments, that the trial court in the criminal case has taken cognizance on the basis of the protest petition filed by the appellant, but the cognizance order has not been produced before this Court. Hence, we are not in a position to accept the said contention. The appellant had also refused to implement the decision of the caste Panchayat and had refused to cohabit with the respondent. Without any rhyme or reason, she has refused to fulfil her matrimonial duties. Her omission does amount to mental cruelty towards the respondent-husband.

11. Although the appellant claimed in her testimony that she is willing to resume her cohabitation with the respondent-husband, but the fact that she is staying away from the husband for the last four years, the fact that she refused to resume her cohabitation despite the direction of the caste Panchayat, the fact that she has false cases both before the police and before the District Women Development Tribunal clearly prove her intention not to live with the husband.

12. Moreover in the last part of the impugned judgment, the learned Judge has clearly noted the impossibility of the reconciliation between the parties. Although irretrievable breakdown of marriage is not a ground for divorce under the Act, but repeatedly the Apex Court has emphasised that it can be a circumstance to be considered by the Court while deciding a divorce petition. As far back as in 1994, in the case of V. Bhagat v. D. Ghagat (Mrs.) : AIR 1994 SC710 , the Hon'ble Supreme Court had recognised irretrievable breakdown of marriage as a valid

reason for dissolving the marriage. In the case of Romesh Chander v. Savitri (Smt.) : [1995]1SCR212 , the Apex Court had clearly held that 'the marriage being dead both emotionally and practically, continuance of marital alliance for namesake would amount to prolonging the agony and affection and would tantamount to cruelty itself.' Therefore, in that case the Hon'ble Supreme Court had dissolved the marriage between the parties. In the case of Durga Prasanna Tripathy v. Arundhati Tripathy : AIR 2005 SC3297 , the Apex Court had clearly noted that 'a workable solution was certainly not possible. Parties cannot at this stage reconcile themselves and live together forgetting their past as a bad dream.' Hence, the Court had dissolved the marriage. Recently in the case of Naveen Kohli v. Neelu Kohli : AIR 2006 SC1675 , the Hon'ble Supreme Court has held that 'a law of divorce based mainly on fault is inadequate to deal with a broken marriage, under the fault theory, guilt has to be proved; divorce courts are presented with concrete instances of human behaviour as they bring the institution of marriage into disrepute.' It further held that 'in view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.' The Hon'ble Supreme Court further suggested that 'the High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. Undoubtedly, it is the obligation of the court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. In the instant case, there has been total disappearance of emotional substratum in the marriage. Preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties not to grant a decree of divorce would be

disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life.'

13. Since in the present case the marriage has become a dead wood, since there is no possibility of resurrecting the marriage, it is better to dissolve the said marriage than to try to rejuvenate a collapsed marriage. Therefore, this Court is not inclined to interfere with the judgment dated 30.8.05. Since the appellant had already accepted the payment of Rs. 30,000/- as full and final payment for maintenance, this Court is not passing any order for permanent alimony for the appellant.

14. In the result, the appeal lacks merit and force. It is, hereby, dismissed. There shall be no order as to costs.

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