

* **HIGH COURT OF DELHI : NEW DELHI**

MAT App. No. 82 of 2007

% Judgment reserved on: 20th August, 2008

Judgment delivered on: 20th October, 2008

Lata Verma
w/o Sh.Jayant Verma
D/o Sh.Gajey Singh Ruhela,
R/o 4905, Gali No.1 (Masjid Wali Gali)
Old Seelam Pur, Delhi. Appellant

Through: Mr.Bhopal Singh, Adv. along
with Appellant in person.

Versus

Jayant Verma
S/o Sh.Suresh Chand Verma
R/o H.No.3592, Gali Hakim Wali,
Darya Ganj,
New Delhi-110002. Respondent

Through: Mr.R.L.Dhingra, Adv.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

The present appeal under Section 28 of the Hindu Marriage Act, 1955 (for short as 'Act") has been filed by the appellant/wife, against the judgment/order dated 11th September, 2007 passed by Ms.Anju Bajaj Chyandna, ADJ, Delhi wherein the Trial Court has allowed the petition of respondent and the marriage between the parties was dissolved by a decree of divorce under Section 13(1)(ia) of the Act.

2. The brief facts of the case are that marriage between the appellant and respondent was solemnized according to Hindu rite and ceremonies on 9th December, 1997 at Delhi. From this wedlock, one male child, Rohan was born to the parties on 24th September, 1998 who is in the custody of the appellant.

3. According to the respondent, appellant was treated with love and affection at the matrimonial home and as the appellant was working woman,

respondent's mother helped the appellant so that she could discharge her official duties properly. It is alleged that appellant was disrespectful towards the respondent and his parents so much so that she was abusive and even slapped the mother of the respondent and insulted her in the presence of the relatives. The respondent and his family tolerated the cruel acts of the respondent with the hope that appellant would improve but the behavior of the appellant continued to deteriorate. The father of the appellant was informed about this behavior and was requested to advise his daughter but despite the efforts of her father, appellant continued with her cruel acts.

4. On 15th April, 1998, appellant left the matrimonial home and went to her parental home.

5. On 16th May, 1998, appellant was brought in the house of the respondent by her father and appellant's father gave written assurance that respondent and his

parents would not be responsible for the acts of the appellant.

6. On 18th May, 1998, appellant left the house for her office but she did not return till 6.30 p.m. in the evening. As the appellant could not be traced, respondent lodged a complaint with Police Station Darya Ganj. The police authorities later on informed that appellant was staying with her parents at Seelampur. The respondent went to the house of appellant's parents on 19th may, 1998 but the appellant refused to come back. Due to persistent efforts of relatives, appellant came to the matrimonial home on 20th September, 1998 and stayed till 27th September, 2008.

7. On 28th September, 1998 while leaving the matrimonial home, the appellant gave undertaking in writing that she was leaving on her own. Thereafter the appellant came to the house of the respondent on

23rd July, 1999 and again left on the next date, that is on 24th July, 1999.

8. The respondent received summons from Crime Against women Cell on 27th July, 1999 as appellant had filed complaint against him. The respondent explained them vide letter to the effect that appellant came back from her office on 24th July, 1999 and took away the 10 months old child. The respondent on his visit to Punjab National Bank came to know that appellant has closed joint account of the parties bearing No.6554, without the consent of the respondent, on 27th July, 1999 and also withdrew money from her Saving Account No.4802. The respondent on checking the suitcase of the appellant came to know that jewelery items were also missing. The entire matter was reported to Police Station Darya Ganj.

9. It is further stated that on 5th August, 1999, respondent received summons from Nari Raksha Samiti, Raj Niwas Marg and despite efforts, the matter

could not be reconciled. The appellant insisted that respondent should leave his parents and reside with her separately and despite sincere request of the respondent, appellant did not agree to live together. On 9th July, 2000, respondent visited the appellant's parental home in order to persuade her to come back but the appellant insisted for living separately and refused to come.

10. On the other hand, it is alleged by the appellant that parents of the appellant spent Rs.3 lacs on her marriage. After three days of the marriage, when the appellant's parents came to the matrimonial home to take the appellant to their home as per tradition, the parents of the respondent demanded Rs.20,000/- as dowry. They harassed the appellant and never allowed her to visit her parents. Several oral complaints were made by the appellant to the Police Station Darya Ganj but nothing was done.

11. On 24th July, 1999, appellant expressed her desire to go to her parental home but she was beaten by the respondent and his parents and the child was forcibly taken from the custody of the appellant. The appellant made complaint to Police Station Darya Ganj on 24th July, 1999 and on the basis of the same, police person reached there and provided the custody of the minor child to the appellant. Since then, appellant has been residing separately.

12. With respect to the incident dated 15th April, 1998, it is admitted that appellant had gone to her parents house since respondent's parents denied medical expenses to her and appellant had to come to her parental home to get financial help. When the appellant went back to her matrimonial home with her father, the appellant's father was compelled to write and give assurance and this was put as a condition to accept the appellant.

13. Further, the appellant, had gone to her parental home for medical check up on 18th May, 1998 and therefore she got late. The respondent was informed and in fact his permission was taken and the complaint was falsely lodged.

14. After the birth of the child on 24th September, 1998, appellant was threatened by her in-laws that if dowry amount of Rs.20,000/- is not paid, the child would be sold anywhere. Thereafter, appellant left the matrimonial home by giving an undertaking to live separately.

15. It is denied that appellant was ever treated with love or affection and the allegations of misbehavior of abusive or violent attitude of the appellant have also been denied.

16. It is further denied that appellant has taken away jewelery items as detailed and it is asserted that two sets and golden ring are still with the in-laws. The

complaint dated 30th July, 1999 is stated to be incorrect.

17. The respondent filed replication reiterating and reasserting the averments made in the petition and controverting those of the written statement.

18. It has been contended by learned counsel for the appellant that the Trial Court has failed to consider that the appellant was aggrieved since she was being mal-treated by the respondent and his parents and they have forced the appellant to leave the matrimonial home on 28th September, 1998 just after three days of delivery of the male child.

19. The Trial Court also failed to appreciate that the respondent and his parents, forced the appellant to give in writing the document Ex.PW-1/4, that she was leaving the matrimonial home on her own accord with the ulterior motive to use the said document against her. The said document does not contain the signature

of appellant, but the same has been forged by the respondent and his parents.

20. It is further contended that as per case of respondent, the appellant abused the respondent and his mother many times and even, sometimes she slapped, the mother of the respondent, but during evidence, the respondent has deposed that the appellant slapped PW-3, Smt. Parvati Verma, in the presence of his relatives, friends of his in-laws of his married sister, but on the contrary PW-3 Parvati Verma stated in her affidavit that the appellant has slapped her on 12.04.1998, but during cross-examination, she has deposed that she was slapped in the month of March, 1998 at about 7 p.m. in the presence of her husband. However, PW-10 Suresh Verma i.e. father of the respondent, has deposed that in the month of March, 1998 the appellant has slapped PW-3 Parvati Verma in day time, but he was not available there and the said fact was told to him by her wife i.e. Parvati Verma.

21. It is further contended that PW-3 Parvati Verma, i.e., mother-in-law of the appellant has stated that the father of appellant has not written the assurance Ex.PW-1/1 on 18th May, 1998, because he had no spectacles at that time and that assurance was prepared later on by Gajey Singh Verma, when all the three persons, visited her house and had put their signature. The said document has been signed by one witness, i.e. Dr. Ramesh Chand, but the said Dr.Ramesh Chand has not been examined as a witness to prove the said document.

22. Other contention is that the Trial Court has failed to take note of the fact that complaint case of the appellant under Sections 498A/406/34 IPC is still pending trial before the Magistrate and during the pendency of said complaint case, the impugned judgment/order passed by the Trial Court is premature and liable to be set aside.

23. It is further contended that the Trial Court has failed to appreciate that on 23rd July, 1999, the respondent and his parents have beaten the appellant, because she wanted to go to her parental home with her minor child and when she requested to allow her to go her parental home and demanded the jewelleries, the respondent and his parents had beaten the appellant badly and locked her in the room and forcibly snatched the minor child. The appellant on 24th July, 1999, somehow escaped and made a complaint to the S.H.O., P.S. Daryaganj and on the intervention of the concerned police official, the custody of minor child was restored to the appellant.

24. Thus, there are many infirmities and contradictions in evidence produced by the respondent and other witnesses. Therefore, in view of the above facts and circumstances, the judgment passed by the Trial Court is liable to be set aside.

25. Learned counsel for the appellant has relied upon the decisions in ***Ravinder Kumar v. Smt. Nirmal (1996) Matrimonial Law Reporter 92, H.S. Uma v. G.K.Sumanth Arya, II (1993) DMC 174 and Urmila Devi v. Deepak Kumar Vyas, II (1999) DMC 52*** in support of its contentions.

26. On the other hand, it is contended by learned counsel for the respondent that there are various contradictions in the pleadings and the evidence of the appellant. The appellant in her written statement has not specifically replied to the pleadings of the respondent in his petition and on the other hand, she has tried to set up her own case that there was demand of dowry on the part of the respondent and his parents and she was being harassed for bringing the balance of dowry demand of Rs.20,000/-

27. The appellant did not dispute the assurance given by her father and by herself though she has stated that her father was compelled to write the assurance

Ex.PW1/1, when her father appeared as a witness he denied having executed Ex.PW1/1 and stated the same is a fabricated document.

28. The appellant has also given contradictory statement about the dowry demand while stating sometimes as Rs.10,000/- and sometimes that Rs.20,000/- were demanded.

29. The appellant also admitted that she withdrew the amount from the joint account without the knowledge of the respondent and also found that some jewellery was missing.

30. The other contention is that after receiving the summons from Women Cell, the respondent offered to take appellant to her matrimonial home whereas, appellant insisted that he should leave his parents.

31. Another contention is that RW-2 who is the maternal uncle of appellant has admittedly proposed his daughter's for marriage with respondent and respondent turned down that proposal. Under these circumstances,

there was no question that this witness would come to the residence of respondent.

32. Thus, the respondent has proved all the allegations of cruelty against the appellant.

33. As regards to the contention of pendency of criminal proceedings, in ***P. Swaroopa Rani Vs. M. Hari Narayana @ Hari Babu 2008 (3) SCALE 501***, the Apex Court has observed as under;

“It is, however, well-settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case.”

34. A constitution bench of the Apex Court, dealing with the same question, in ***Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr, 2005 (2) RCR (Criminal) 178*** has observed as under;

“Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal Courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a

criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint under Section 476 of old Code, the following observations made by a Constitution Bench in ***M.S. Sheriff v. State of Madras, AIR 1954 SC 397*** give a complete answer to the problem posed:

"As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal Courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure;

that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust."

35. In ***M. Krishnan v. Vijay Singh & Anr., JT 2001 (8)***

SC 540, the Apex Court has observed as under;

"Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of."

36. Thus, in view of the above decisions, this contention of appellant is rejected.

37. The following acts in the nature of cruelty are in question in the present case:-

- (i) The appellant was disrespectful towards respondent and his parents so much so that she slapped the mother of the respondent and insulted her in the presence of others.

(ii) The misconduct of the appellant continued despite the tolerance of the respondent and his family members and on 15th April, 1998 appellant left the house and was brought back on 16th May, 1998 by her father and written assurance was given by the father of the appellant for her good behavior.

(iii) On 18th May, 1998 itself appellant again left the house for office but did not return. Subsequently, it was revealed that appellant had gone to her parental home. The appellant refused to come back to the matrimonial home on 19th May, 1998.

(iv) The appellant came back on 20th September, 1998, gave birth to a child on 24th September, 1998 and again left the matrimonial home on 28th September, 1998 by giving an undertaking that she is voluntarily leaving the matrimonial home.

(v) Lastly the appellant came on 23rd July, 1999 and left on the next date and thereafter filed complaint before Crime against Women Cell. It was also discovered that appellant withdrew money from the joint account of the parties. The appellant finally refused to come back and insisted to get separate from her in-laws and parties continued to live separately.

38. Cruelty is a ground for divorce under Section 13 of the Act and it provides, so far as is material;

“13. Divorce.- (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

(i) x x x x x

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) to (vii) x x x x x x
Explanation- x x x x x x”

39. The word 'cruelty' has not been defined in the Hindu Marriage Act. D. Tolstoy in his celebrated book "*The Law and Practice of Divorce and Matrimonial Causes*" (Sixth Edition, p. 61) defined cruelty in these words:

“Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such a 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.”

40. The *Shorter Oxford Dictionary* defines “cruelty” as “the quality of being cruel; disposition of inflicting suffering; delight in or indifference to another's pain; mercilessness; hard-heartedness”.

41. The term "mental cruelty" has been defined in *Black's Law Dictionary* [8th Edition, 2004] as under:

“*Mental Cruelty* - As a ground for divorce, one spouse's course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse.”

42. The concept of cruelty has been summarized in *Halsbury's Laws of England* [Vol.13, 4th Edition, Para 1269] as under:

“The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. In cases where no violence is averred, it is undesirable to consider judicial pronouncements with a view to creating certain categories of acts or conduct as having or lacking the nature or quality which renders them capable or incapable in all circumstances of amounting to cruelty; for it is the effect of the conduct rather than its nature which is of paramount importance in assessing a complaint of cruelty. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact and previously decided cases have little, if any, value. The court should bear in mind the physical and mental condition of the parties as well as their social status, and should consider the impact of the personality and conduct of one spouse on the mind of the other, weighing all incidents and quarrels between the spouses from that point of view; further, the conduct alleged must be examined in the light of the complainant's capacity for endurance

and the extent to which that capacity is known to the other spouse. Malevolent intention is not essential to cruelty but it is an important element where it exists."

43. In 24 *American Jurisprudence* 2d, the term "mental cruelty" has been defined as under:

"Mental Cruelty as a course of unprovoked conduct toward one's spouse which causes embarrassment, humiliation, and anguish so as to render the spouse's life miserable and unendurable. The plaintiff must show a course of conduct on the part of the defendant which so endangers the physical or mental health of the plaintiff as to render continued cohabitation unsafe or improper, although the plaintiff need not establish actual instances of physical abuse."

44. In ***Dr. N.G. Dastane v. S. Dastane, AIR 1975 SC 1534***, the Apex Court has observed as under;

"...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".

45. In the case of ***Shobha Rani v. Madhukar Reddi***, ***AIR 1988 SC 121***, the Apex Court has observed as under;

“Section 13(1)(ia) uses the word “treated the petitioner with cruelty”. The word “cruelty” has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behavior. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of 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 to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the 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. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the 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.”

The Court further observed;

“The context and the set up in which the word “cruelty” has been used in the Section seems to us, that intention is not a necessary element in cruelty. That the word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case, if by ordinary sense in human affairs, that act complained of could otherwise be regarded as cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment.”

46. In the case of ***V. Bhagat v. D. Bhagat, (1994) 1 SSC 337***, the Apex Court has observed as under:

“Mental cruelty in Section 13 (1)(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. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.”

47. Again in ***Savitri Pandey v. Prem Chandra Pandey***, ***AIR 2002 SC 591***, the Apex Court has observed as under;

“Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. “Cruelty”, therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear

and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other.”

48. In ***Praveen Mehta v. Inderjit Mehta, AIR 2002 SC 2582***, the Apex Court has laid down as to what constitute cruelty;

“Cruelty for the purpose of Section 13(1)(ia) is to be taken as a behavior by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behavior or behavioral pattern by the other. Unlike the case of physical cruelty the mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an

instance of misbehavior in isolation and then pose the question whether such behavior is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.”

49. Again in ***A. Jayachandra v. Aneel Kaur, AIR 2005 SC 534***, a three judge Bench of Apex Court observed that ;

“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 willful 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 his spouse same is established and/or an inference can be legitimately drawn that the treatment of

the spouse 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 delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, a 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 acts 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 Court further held;

“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 circumstances 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 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 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 weighed 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 hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court.”

50. The Apex Court in ***Vinita Saxena v. Pankaj Pandit***, AIR 2006 SC 1662, has observed as under;

“As to what constitute the required mental cruelty for purposes of the said provision, will not depend upon the numerical count of such incidents or only on the continuous course of such conduct but really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a conducive matrimonial home.

If the taunts, complaints and reproaches are of ordinary nature only, the court perhaps need consider the further question as to whether their continuance or persistence over a period of time render, what normally would, otherwise, not be so serious an act to be so injurious and painful as to make the spouse charged with them genuinely and reasonably conclude that the maintenance of matrimonial home is not possible any longer.”

51. Now, the acts of cruelty as pleaded by the parties have to be analyzed in the view of evidence produced by the parties.

52. The respondent examined himself as PW-1 and has given statement on oath reiterating and reasserting the grounds and the allegations pleaded in the petition. The respondent proved writing given by the father of the appellant as Ex.PW-1/1, complaint filed by the respondent about missing of the appellant Ex.PW-1/2, Birth Certificate issued by Dr.Ritu Sabharwal, Ex.PW-1/3, the writing of the appellant about her leaving the matrimonial home Ex.PW-1/4. The complaint lodged with Police Station Darya Ganj by the respondent Ex.PW-1/5 and copy of complaint moved before Crime against Women Cell Ex.PW-1/6, the summons received from Crime against Women Cell Ex.PW-1/7, the summons received from Nari Raksha Samiti Ex.PW-1/8 and Ex.PW-1/9.

53. The respondent, although has given consistent and categorical testimony while examining himself as pW-1 reiterating the above mentioned grounds and also proving the supporting documents but during the cross-examination, the testimony of respondent was not confronted or controverted with any of the above mentioned grounds or allegations of the behaviour of the appellant. Certain questions were asked to the respondent about the nature of his pleadings but nowhere the testimony of respondent was rebutted or challenged to the effect that case put forward by him is false or baseless. Even the basic suggestion that respondent has deposed falsely, was not put to the respondent.

54. On consideration of cross-examination of the respondent conducted on behalf of the appellant, it is clear that appellant had nothing to dispute about the allegations and nature of cruelty pleaded and testified by the respondent. In other words, there is no challenge or controversy to the version of the

respondent put forward to claim dissolution of marriage.

55. As regards to the contention of incidence of slapping respondent's mother and insulting her in the presence of others by appellant, PW-2 Nadeem Ahmed stated in his testimony that the behavior of the appellant towards the respondent and his parents was arrogant and insulting. The witness, on visits to the house of the respondent found appellant quarreling and abusing and insisting that the respondent should leave his parents.

56. PW-3, Parvati Verma, mother of the respondent has supported the case of the respondent by reasserting the entire averments of the petition by tendering her affidavit in evidence, Ex. PW-3/1.

57. She has stated in her evidence that the appellant was always disrespectful towards the respondent and his parents from the very first day of the marriage. The appellant used to abuse the deponent, her

husband and the respondent, many a times during her stay in the family. The appellant once slapped her on 12th April, 1998 in the presence of other relatives. She further stated that the entire family including the respondent, tolerated every cruel act of the appellant with a hope that the appellant may improve in near future, but that never happened, rather deteriorated every day. The intolerable attitude of the appellant was narrated to her father. The father of the appellant tried his level best but the appellant continued with her unwanted cruel acts.

58. From the evidence by way of affidavit of PW-3, it is clear that she specifically supported the case of the respondent and she has also successfully stood through the test of cross-examination. Also the defence put forward by the appellant in her written statement was not suggested to her on material points that PW-3/mother of the respondent, was demanding Rs.20,000/- as balance of dowry amount or that the appellant was beaten in the presence of relatives by

her (PW-3). Also no suggestion was given to PW-3 about the incident dated 23th July, 1999 to the effect that she had snatched the child of the appellant and had locked the appellant in a room.

59. Similarly, the father of the respondent has also given categorical testimony by tendering affidavit Ex.PW-10/A in support of the case of the respondent but he has also not been cross-examined on material points and nothing favourable could be elicited from him on behalf of the appellant.

60. PW-4 Smt. Rani Saini happens to be the neighbour and friend of the mother of the respondent. She gave affidavit in evidence Ex.Pw-4/1 stating that it was simple marriage between the parties and the behaviour of the appellant was arrogant and abusive towards the respondent and his parents.

61. PW-5 Constable, Chand Ram brought the record of the police complaint Ex.Pw-1/5 lodged by the respondent.

62. PW-6 Ms. Indu Mahindroo has got friendly relations with the respondent's mother. She has also supported the factum of arrogant behaviour of the appellant by giving her affidavit in evidence Ex.PW-6/A.

63. PW-7 Smt. Vijay Bala is the relative of the respondent and she has also stated about the behaviour of the appellant.

64. PW-8 Ms. Mala Rani is the neighbour of the respondent and she has also supported the case of the respondent by giving affidavit Ex.PW-8/A to the effect that marriage of the parties was simple and behaviour of the appellant was arrogant.

65. Thus, it is clear from the testimony of the respondent and his witnesses that appellant has committed various acts of cruelty and the appellant has failed to shake their testimony and failed to prove her case by bringing convincing evidence on record.

66. Regarding the incidence of demanding balance amount of dowry from the appellant, appellant as RW-3 has tendered her affidavit in evidence and stated that her father had spent Rs.3 lacs on the marriage, out of which Rs.1 lac was to be given as cash. On two occasions amount of Rs.25,000/- and Rs.50,000/- were given. Balance amount was not available with her father. It was asserted by the respondent's mother that balance amount should be given before Phera Ceremony and this amount was given on the Phera Ceremony. Appellant further deposed that her father was told by the respondent's parents to give gold jewellery of 15 tolas and some items of silver were also given. After the marriage, all articles were taken by the respondent's mother and they are still in her custody. After three days of marriage, appellant informed her parents that she was not being treated properly as respondent's mother asked for Rs.10,000/- which was remaining balance out of Rs.1 lac. On asking by the appellant's father about ill-treatment,

respondent's mother asked for the balance amount and said that in the event of non-payment, the appellant would not be allowed to go to her parental home.

67. Further, appellant stated in her evidence that after one month, her parents again visited the matrimonial home along with their sons and relatives to request the respondent's parents to behave properly but again they started disregarding and insulting the appellant's parents. The mother of the respondent started beating the appellant before her parents and guests. The matter was reported by way of oral complaint to SHO, Police Station Darya Ganj. Parents of the respondent had assured that they will not harass the appellant in future. It is further stated in the affidavit by the appellant that her mother-in-law used to quarrel on baseless grounds and whenever appellant demanded her jewellery she was beaten several times. It is asserted that sometimes parents of the respondent demanded Rs.10,000/- and sometimes they demanded Rs.20,000/-.

68. After about six months of the marriage, appellant was beaten mercilessly on the provocation of mother-in-law and on the visit of her brother Yashpal Singh to the matrimonial home same evening the appellant narrated to him about the incident. He requested the in-laws to treat the appellant properly but his request was ignored. It is asserted that appellant was disregarded at the matrimonial home and it was threatened that respondent would get married again.

69. One day before 24th July, 1999 the parents of the respondent again beat up the appellant by locking in the room as appellant wanted to go to her parents house and appellant had demanded her jewellery.

70. On the next day, the mother-in-law snatched the child forcibly from the appellant. The appellant reached Police Station Darya Ganj and filed written complaint and with the help of the police, appellant got her child back and thereafter came to her matrimonial home.

71. It is asserted that appellant is still desirous to reside with the respondent and after 24th July, 1999 he did not make efforts to take her back. The respondent and his mother have threatened the appellant in the court premises about remarriage and in May 2001, the respondent has got remarried.

72. Appellant also examined Narender Kumar as RW-1 who is neighbour as well as uncle of the appellant, RW-2 Satya Prakash is the maternal uncle of the appellant, RW-4 Sh. Maharaj Singh, is also uncle of the appellant, RW-5 Yashpal Singh, brother of the appellant and RW-6 Gaje Singh, father of the appellant who had stated on the similar lines as stated by RW-3, the appellant.

73. The Trial Court in its judgment held that;

“Coming to the defence of the respondent, I find that there are various contradictions in the pleadings and the evidence of the respondent. The respondent has not specifically replied the pleadings of the petitioner in the written statement

and rather she has tried to set up her own case stating that there were dowry demands on the part of the petitioner and his parents and that she was harassed for balance dowry demand of Rs. 20,000/-. The testimony of respondent and her witnesses is inconsistent and variations appearing on the material points make them unworthy of credit. The respondent has not disputed the assurance given by her father Ex.PW-1/1 and by herself Ex.PW-1/4. Although the respondent has stated that her father was compelled to write the assurance Ex.PW-1/1, but the father of the respondent appeared as a witness and denied having executed Ex.PW-1/1 and stated that the same is a fabricated document. The respondent has also given contradictory statements about the dowry demands by stating that sometimes Rs.10,000/- was demanded and sometimes Rs.20,000/- was demanded. However, the respondent has failed to prove the same as this important allegation was not put either to the respondent or to his parents in their testimony so as to confront them with the defence of the respondent. On consideration of the affidavits of the respondent as well as her witnesses, I find that altogether new pleas have been raised therein which are inconsistent and different to the original pleadings contained in the written statement. In view of the variations in the pleadings and the

evidence of the respondent, I find no justification to place reliance upon the same. The respondent has failed to remain consistent and cogent while putting forward her defence before the court particularly when she has failed to specifically reply and rebut the pleas taken by the petitioner. The witnesses examined by the respondent do not appear to be truthful as they have given the testimony by detailing facts which are beyond the pleadings of the respondent and based on hearsay information. It is well settled that hearsay and irrelevant facts are not admissible in evidence. The witnesses of the respondent including the respondent cannot be believed upon as the allegations leveled by them in the evidence were not the part of the pleadings contained in the written statement. They have also given contradictory versions during their cross-examination which shows that witnesses are not truthful.”

74. I am in agreement with the Trial Court on this point.

75. Further, as regard to the documents Ex.PW-1/G(4), the appellant stated in her pleadings that she has written Ex.PW-1/G(4) in her own hand writing and

further explained that she gave the said undertaking as she was threatened by her in-laws to the effect that minor child would be sold if the balance dowry amount of Rs.20,000/- is not paid but the appellant contradicted this statement in the cross-examination by stating that the same was obtained under force.

76. It is also admitted by the appellant that she left for her parental home on 15th April, 1998 and came back on 16th May, 1998. It is also admitted that on 18th May, 1998, the appellant again left for her parental home.

77. According to the respondent, appellant refused to come back on 19th May, 1998 despite the visit of the respondent to her parental home but the appellant had not responded to these averments either in her written statement or in her evidence leading to the conclusion that appellant remained at her parental home till 20th September, 1998.

78. It is also admitted by the appellant that she again left the matrimonial home on 28th September, 1998 with the newly born child.

79. In this way it is evident that appellant lived at the matrimonial home only for short intervals and most of the times she was living at her parental home, thereby, strengthening the case of the respondent.

80. Considering the incident dated 23rd July, 1999, according to the respondent, appellant came back to the matrimonial home on 23rd July, 1999 after a gap of about 10 months but again the appellant left the matrimonial home on 24th July, 1999. The appellant simply denied these averments in her written statement but during the testimony of the respondent, this fact was not disputed as no suggestion to the contrary was put to the respondent.

81. In her evidence, the appellant has set up a new case by stating that she was locked in a room and was beaten by the parents of the respondent when she

requested them to go to her parental home. There is no explanation as to why these specific pleas were not raised in her written statement nor they were put to the respondent or his mother during their cross-examination.

82. It is clear that the appellant has not remained consistent on her allegations and she has been improving her defence at the belated stage. In the circumstances, no reliance can be placed upon the version of the appellant.

83. On the other hand, the respondent has been able to establish by way of specific pleadings and evidence that appellant came back to the matrimonial home on 23rd July, 1999 after the birth the child. In view of this, it is difficult to accept that the incident of beating and confining the appellant had happened on 23rd July, 1999.

84. It is admitted by the appellant in her cross-examination that she withdrew the amount from the

joint account of the parties without informing the respondent. It is also admitted by the appellant in her cross examination that she demanded separate residence before Crime against Women Cell stating that she was fed up with the cruelty.

85. The act of the appellant in withdrawing the amount from the joint account of the parties without informing the respondent also indicates the intention of the appellant to stay separately.

86. Thus, in view of the above discussion and in the light of evidence, it is clear that the appellant has not been able to establish her case and the conduct of the appellant was not proper towards the respondent and his parents thereby causing cruelty to them.

87. Hence, I do not find any infirmity or illegality in the impugned judgment passed by the Trial Court.

88. The present appeal is, hereby dismissed.

89. No order as to costs.

90. Trial Court record be sent back.

20th October, 2008
Bisht/rs

V.B.GUPTA, J.