

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Date of decision: 29th January, 2015

% **MAT. APP. 5/2013**

SWATI Appellant

Through : Ms. Meenakshi Agarwal, Advocate
Mr. Sunil Mittal, *Amicus curiae*

versus

ARVIND MUDGAL Respondent

Through : Ms. Dimple Vivek, Advocate

**CORAM :-
HON'BLE MR. JUSTICE J.R. MIDHA**

JUDGMENT

1. The appellant has challenged the judgment of the learned Additional District Judge whereby her petition for divorce on the ground of cruelty has been dismissed. For the sake of convenience, the parties shall be referred as per their ranks before the learned Trial Court as 'petitioner' and 'respondent', respectively.

Petitioner's case

2. The respondent married the petitioner on 14th June, 2009 by using force, undue influence and coercion. The respondent used to go wild after drinking liquor and he used to utter filthy abuses to the petitioner. The respondent never allowed the petitioner to visit her parents even for a day. The respondent used to quench his thirst of inner instinct by humiliating the petitioner in public by abusing, slapping or dragging her by her hairs. The respondent used to beat the petitioner with whatever came to his hand that

might be racket, shoes, slipper, belt, lamp-shed. The verbal abusiveness, violent tendencies and the paranoid behavior practiced by the respondent upon the petitioner within short span of about two weeks of marriage badly shattered inner soul of the petitioner.

3. On 29th June, 2009 i.e. after 15 days of the marriage, the petitioner was arrested by the police for the murder of a boy, named Gopal under Sections 302/34 IPC.

4. After about two weeks of the arrest of the respondent i.e. in second week of July, 2009, the mother of the respondent started humiliating the petitioner by taunting her that her son went to jail because of marrying her and she demanded Rs.2 lakh from the petitioner for pursuing the Court case.

5. On 26th August, 2009 at 9.30 AM, the petitioner went to Butler Public School to attend the parents-teacher meeting of the respondent's minor sister, Anjali on the instructions of her mother-in-law. The petitioner returned at around 11.30 a.m. when she found her mother-in-law in objectionable clothes with a middle age man who left on seeing the petitioner whereupon her mother-in-law tortured and slapped the petitioner.

6. On 9th October, 2009, the petitioner's mother-in-law took her to Tis Hazari Court. The petitioner's step-father also came there. The respondent as well as his mother abused and humiliated the petitioner's step-father. The petitioner's mother-in-law on several occasions took her to Tis Hazari Court where she disgracefully insulted her. The petitioner's mother-in-law also abused the petitioner's mother several times on telephone.

7. On 5th November, 2009, the petitioner left the matrimonial home and came back to her parents for her safety. At that time, the respondent's mother had gone to Agra to visit her other son, Kuldeep who was lodged in Agra Jail. The petitioner received many telephonically threats directly from her mother-in-law and unknown persons threatening on behalf of the respondent.

8. On 5th April, 2011, the petitioner instituted a petition for grant of divorce on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

9. On 2nd May, 2011, the respondent was convicted under Section 302/34 IPC by the Court of learned Additional Sessions Judge and sentenced to imprisonment for life.

10. The respondent challenged his conviction before this Court in Criminal Appeal 923/2011 which was dismissed on 19th March, 2014.

Respondent's case

11. The petitioner is a greedy and cruel lady and has filed the divorce petition only to extort money from the respondent. The petitioner demanded Rs. 5 lakh from the respondent and his mother to purchase a new house for her family with a threat to make their life hell. The petitioner used to tell the respondent that she married him to buy a new house for her parents with the respondent's money and if the respondent failed to fulfill her demands, she will implicate the respondent and his family in false cases.

12. The respondent's mother succumbed to the threats of the petitioner and gave Rs.5 lakh to the petitioner to save the matrimonial home of her son. The petitioner purchased a new

house bearing No.F-183A, Gali No.6, Wazirabad, Delhi for her parents with the aforesaid amount.

13. The petitioner pressurized the respondent and her family members to transfer the title deeds of his residence (which is in the name of respondent's mother) in the name of the petitioner. The illegal demands of the petitioner increased day by day and the respondent and his family members tried their level best with the hope that better sense will prevail upon the petitioner one day, but the petitioner's greed became very high and she started pressurizing the respondent and his family members to transfer the title deeds of their residence in her favour. However, the respondent and his mother overlooked this demand.

14. The petitioner in collusion with her childhood friend, Anju falsely implicated the respondent for the murder of Gopal in FIR No.111/2009, P.S. Timarpur, New Delhi under Sections 302/34 IPC because the respondent and her mother refused to transfer the title deeds of their residence in favour of the petitioner.

15. Even when the respondent was in custody, the petitioner threatened him to transfer the title of his residence in her favour and in return, she will ask her friend Anju, (widow of Gopal who was murdered), not to depose against the respondent, but if the transfer of the title was not done by the respondent in her favour, the petitioner will falsely implicate the respondent, which she actually did.

16. The petitioner wants divorce without any rhyme or reason because the respondent has been convicted in a false case at the behest of the petitioner for failing to fulfill the desires of the

petitioner and her family members of leading a luxurious life with the respondent's money, as he was earning handsomely, which she had anticipated at the time of marriage.

17. The petitioner's father also threatened the respondent to transfer the title of his residence in petitioner's name, failing which the respondent would remain in jail for ever. The respondent asked the petitioner's father where his family would go after transferring the title whereupon the petitioner's father said that it was not their concern.

18. On 5th November, 2009, the respondent's mother went to Agra to look after her ailing husband. At the time of leaving for Agra, the respondent's mother handed over the keys of the locker to the petitioner in which her jewellery of about 8 to 10 *tolas* and cash of about Rs.3 lakh were kept for medical treatment of her husband. When the respondent's mother reached Agra, she got the news that the petitioner had run away from the matrimonial home and has taken away the entire jewellery and cash of Rs.3 lakh kept in the locker for the medical expenses of her husband.

Evidence led by the parties before the Trial Court

19. The petitioner appeared in witness box as PW-1 and reiterated the case set up by her in the divorce petition. She was cross-examined at length by the respondent's counsel. The petitioner clearly admitted in cross-examination that her marriage to the respondent was a love marriage. However, in cross-examination not even a single question/suggestion was put to her with respect to the defence set up by the respondent more particularly with respect to the allegations that the respondent's

mother had paid Rs.5 lakh to the petitioner to enable her to purchase a house for her family; that the petitioner threatened the respondent to transfer the title of her mother's house in her name, which was not agreed to by the petitioner and, therefore, she falsely implicated the respondent for murder of Gopal; that the respondent's mother left for Agra on 5th November, 2009 after leaving the locker keys with the petitioner; and that the petitioner left the matrimonial home on 5th November, 2009 and took away the entire jewellery of the respondent's mother and cash of Rs.3 lakh from the locker. The petitioner's mother Ramesh Kumari appeared in the witness box as PW-2 and she reiterated the case set up by the petitioner. PW-2 was also cross-examined at length but again the aforesaid defence set up by the respondent was not put to her.

20. The respondent appeared in the witness box as RW-1 and reiterated the defence set up by him in his written statement. The respondent reiterated in cross-examination that the marriage between the parties was a love marriage. He was cross-examined at length. In cross-examination, the respondent pleaded complete ignorance as to when the petitioner's parents purchased house No.F-183A, Gali No.6, Wazirabad, Delhi. He pleaded complete ignorance of the statement made in the written statement and examination-in-chief that his mother gave Rs.5 lakh to the petitioner.

Findings of the Trial Court

21. The learned Trial Court held that the marriage between the parties was a love marriage and, therefore, the allegations of force,

undue influence and coercion by the petitioner were mis-founded. The learned Trial Court held that the parties lived together only for a period of 15 days from 14th June, 2009 to 29th June, 2009 and the allegations of cruelty have not been substantiated since the petitioner has not given the specific dates and detailed particulars of the alleged incidents. The learned Trial Court further held that arrest and conviction of the respondent for the offence of murder cannot be termed as cruelty as is envisaged in the Hindu Marriage Act. The learned Trial Court further observed that the petitioner has not specifically pleaded and proved that the conviction and imprisonment for life of the respondent has resulted any cruelty to her.

Additional evidence led by the petitioner before this Court

22. During the pendency of the appeal, the petitioner moved an application for permission to lead additional evidence, which was allowed by this Court vide order dated 18th September, 2014, whereupon the petitioner filed her additional evidence by way of affidavit in which she deposed as under:-

- (i) The criminal background of the respondent and his subsequent conviction has caused immense mental pain and agony to her and she is looked upon in the society and amongst the family members as murderer's wife because of the heinous crime committed by the respondent.
- (ii) The respondent's cruel act has resulted in physical deprivation of matrimonial relationship which has caused physical and mental pain and torture.

- (iii) The conviction and incarceration of the respondent in jail has also resulted in constructive desertion.
- (iv) The petitioner proved the certified copies of the judgment of the Sessions Court as Ex.AW-1/1 and certified copy of the judgment of the High Court in Criminal Appeal No.923/2011 as Ex.AW-1/2 and the complaint made to the police as Ex. AW-1/3.
- (v) On 21st August, 2014, between 10:30 p.m. to 11:00 p.m., the petitioner found respondent roaming around her house and he threatened the petitioner to eliminate her entire family. Some unknown person also visited petitioner's house at the instance of the respondent and she received a threatening call from phone No.9711311391.
- (vi) On 28th August, 2014, the petitioner again received a call from mobile No.8750605013 from the respondent when he threatened the petitioner to withdraw this appeal, failing which he would throw the petitioner from rooftop as the punishment of one murder and 10 murders is the same.
- (vii) The petitioner reported the matter to the police vide Diary No.63B on 4th September, 2014, copy whereof was proved as Ex.AW-1/3.

Submissions of the petitioner

23. Learned counsel for the petitioner has urged at the time of hearing that the petitioner has duly proved various instances of cruelty suffered by her. It is further submitted that the respondent brutally murdered Gopal which resulted in his conviction and imprisonment for life which has resulted in mental cruelty to the

petitioner. Learned counsel has referred to and relied upon *Vimla Bai v. Panchu Lal*, AIR 2007 Rajasthan 99; *Mohanan v. Thankamani*, 1994 (2) KLJ 777; *Sri Ganesha v. Smt. Vijaya*, M.F.A No.11864/2011(FC), decided by Karnataka High Court on 19th March, 2012; and *Sunita Devi v. Om Prakash*, (2010) 174 DLT 471 in which the Courts have granted the decree of divorce on the ground of the conviction of the spouse for the offence of murder under Section 302 IPC. Reliance was placed on *Shobha Rani v. Madhukar Reddi*, (1988) 1 SCC 105; *A. Jayachandra v. Aneel Kaur*, (2005) 2 SCC 22; *Vinita Saxena v. Pankaj Pandit*, (2006) 3 SCC 778; *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511; *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*, (2012) 7 SCC 288; *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226 in which the Courts laid down the principles relating to the meaning of the term ‘cruelty’. Learned counsel further submitted that the conviction resulting in sentence of imprisonment for a period of seven years and upwards is a valid ground of divorce under Section 27(1) of the Special Marriage Act, 1954, Section 2(iii) of the Dissolution of Muslim Marriage Act, 1939 and Section 32(f) of the Parsi Marriage and Divorce Act, 1936. Reference was made to the matrimonial laws in Arizona, Illinois and Texas of USA which provide the conviction for serious offences as a valid ground for divorce.

Submissions of the respondent

24. Learned counsel for the respondent has urged at the time of the hearing that the marriage between the parties was a love marriage and the parties lived together only for a period of 15 days.

The instances of cruelty relied upon by the petitioner are vague and in any case, they are not sufficient to constitute cruelty for granting divorce to the petitioner. The petitioner did not plead before the Trial Court that the offence of murder has resulted in cruelty to her and the additional evidence led by the petitioner is beyond the pleadings before the Trial Court. The petitioner did not agitate before the Trial Court that false allegations in the written statement have caused mental cruelty to her. Learned counsel further referred to ***K.R. Mohan Reddy v. M/s Net work Inc. Rep. Tr. M.D.***, AIR 2008 SC 579; ***State of Gujarat v. Mahender Kumar***, AIR 2006 SC 1864; ***Haryana State Industrial Development Corporation v. Cork Manufacturing Co.***, AIR 2008 SC 56 in support of her contention that good reason must be shown for leading additional evidence. Reliance was placed on ***Malyalam Plantations Ltd. v. State of Kerala***, VIII (2010) SLT 452; ***Mahavir Singh v. Naresh Chandra***, VIII (2000) SLT 163 in support of the proposition that additional evidence cannot be permitted to be adduced to fill up the lacuna or patch up weak points of a case. Reliance was placed on ***Appasahab v. State of Maharashtra***, (2007) 9 SCC 721 where the Supreme Court held that the demand of the accused for domestic expenses and purchasing manure cannot be said to be dowry and ***Sunil Bhiku Yadav v. State of Maharashtra***, 2009 CriLJ 4262 in support of the proposition that the dowry refers to the property given or agreed to be given at or before or at any time after marriage or in connection with marriage.

Submissions of the Amicus Curiae

25. Vide order dated 18th September, 2014, this Court appointed Mr. Sunil Mittal, Advocate, as *amicus curiae* to assist this Court, particularly on the issue as to whether the offence of murder committed by the respondent would constitute cruelty to the petitioner. Learned *amicus curiae* has further submitted that the instances of cruelty proved by the petitioner are sufficient to grant a decree of divorce to her. Learned *amicus curiae* referred to *Shobha Rani v. Madhukar Reddi*, (1988) 1 SCC 105, *A. Jayachandra v. Aneel Kaur*, (2005) 2 SCC 22; *Vinita Saxena v. Pankaj Pandit*, (2006) 3 SCC 778; *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511; *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*, (2012) 7 SCC 288; *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226; *Parveen Mehta v. Indermeet Mehta*, AIR 2002 SC 82; *Keshorao Krishanji Londhe v. Nisha Londhe*, AIR 1984 BOM 413 (FB) with respect to the meaning of the term ‘cruelty’. Learned *amicus curiae* submitted that though the ground of raising false and defamatory statements against the petitioner in the written statement was not specifically pressed by the petitioner before the Trial Court, but there is no impediment in pressing this ground in appeal which is the continuation of suit. Learned *amicus curiae* referred to *K. Srinivas Rao v. D.A. Deepa* (supra); *Hemwanti Tripathi v. Harish Narain Tripathi*, AIR 2012 DELHI 1; *D.N. Sharma v. USha Sharma*, AIR 2004 DELHI 109; *Jai Dayal v. Shakuntala Devi*, AIR 2004 DELHI 39; *Ramesh Kumar Sharma v. Akash Sharma*, (2008) II DMC 315 HP; *Mohinder Kaur v. Bhag Ram*, AIR 1979 P&H 71; *Pushpa Datt Mishra v. Archana*

Mishra, AIR 1992 260 (Madhya Pradesh) on the proposition that wild, false, scandalous and unsubstantiated allegations made in the written statement amount to cruelty. Reliance was placed on **Shobha Rani v. Madhukar Reddi** (supra); **A. Jayachandra v. Aneel Kaur**; **S. Latha Kunjamma v. K. Anil Kumar**, 2008 (2) KLJ 49, **Pushpa Rani v. Krishan Lal**, AIR 1982 Delhi 107, **Parihar (Priti) v. Parihar (Kailash Singh)**, AIR 1978 Rajasthan, where the Courts held that subsequent events can be looked into by the appellate Court. Learned *amicus curiae* also referred to **Vimla Bai v. Panchulal**, AIR 2007 Rajasthan 99; **Mohanan v. Thankamani**, 1994 (2) KLJ 777; **Sri Ganesha v. Smt. Vijaya**, M.F.A No. 11864/2011(FC), decided by Karnataka High Court on 19th March, 2012; **Sunita Devi v. Om Prakash**, (2010) 174 DLT471; **Ram Lalli v. Soney Lal**, (1990) I DMC 518 (Madhya Pradesh High Court), in which the Courts upheld the conviction for murder under the Indian Penal Code as a valid ground for divorce. Learned *amicus curiae* also referred to Section 27(1) of the Special Marriage Act, 1954, Section 2 (iii) of the Dissolution of Muslim Marriage Act and Section 32(f) of the Parsi Marriage and Divorce Act where the sentence to imprisonment for a period of seven years and upwards has been specifically made ground of divorce. Learned *amicus curiae* also referred to the matrimonial laws in Arizona, Illinois and Texas of USA, Italy and UK where the conviction for a serious offence is recognized as a valid ground of divorce. Reference was made to **Stanwich v. Stanwich**, (1970) 3 All. E.R. 983; **Cade v. Cade**, (1957) All. E.R. 609, **Sheldon v. Sheldon**, 1966 (2) All. E.R.257 at 259.

26. **Cruelty under Section 13(1)(ia) of Hindu Marriage Act**

Under Section 13(1)(ia) of the Hindu Marriage Act, 1955, a marriage can be dissolved on the ground of cruelty by one spouse to the other. ‘Cruelty’ may be physical or mental. The term ‘cruelty’ means when one spouse has so treated the other and manifested towards him or her so as to cause such feelings towards him or her as to cause in her or his mind reasonable apprehension that it will be harmful or injurious to live with the other spouse. In the recent pronouncement of the Supreme Court in Dr. (*Mrs.*) **Malathi Ravi v. Dr. B.V. Ravi**, (2014) 7 SCC 640, the Supreme Court noted all the relevant cases which dealt with the issue of mental cruelty and therefore, this judgment alone is sufficient to note the relevant principles. The relevant portion of the said judgment is reproduced hereunder:

“29. Before we proceed to deal with the issue of mental cruelty, it is appropriate to state how the said concept has been viewed by this Court. In Vinita Saxena v. Pankaj Pandit [(2006) 3 SCC 778] , while dealing with the issue of mental cruelty, the Court held as follows:

“31. It is settled by a catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the section. It is to be determined on whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such wilful treatment of the party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living

together of spouses harmful or injurious having regard to the circumstances of the case.

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35. Each case depends on its own facts and must be judged on these facts. The concept of cruelty has varied from time to time, from place to place and from individual to individual in its application according to social status of the persons involved and their economic conditions and other matters. The question whether the act complained of was a cruel act is to be determined from the whole facts and the matrimonial relations between the parties. In this connection, the culture, temperament and status in life and many other things are the factors which have to be considered."

30. *In Samar Ghosh v. Jaya Ghosh [(2007) 4 SCC 511] this Court has given certain illustrative examples wherefrom inference of mental cruelty can be drawn. The Court itself has observed that they are illustrative and not exhaustive. We think it appropriate to reproduce some of the illustrations: (SCC pp. 546-47, para 101)*

"(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

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educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances....”

32. *In Vishwanath Agrawal v. Sarla Vishwanath Agrawal (2012) 7 SCC 288, while dealing with mental cruelty, it has been opined thus:*

“22. The expression ‘cruelty’ has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status.”

33. *In the said case, analysing the subsequent events and the conduct of the wife, who was responsible for publication in a newspaper certain humiliating aspects about the husband, the Court held as follows:*

“54. ... In our considered opinion, a normal reasonable man is bound to feel the sting and the pungency. The conduct and circumstances make it graphically clear that the respondent wife had really humiliated him and caused mental cruelty. Her conduct clearly expositis that it has resulted in causing agony and anguish in the mind of the husband. She had

publicised in the newspapers that he was a womaniser and a drunkard. She had made wild allegations about his character. She had made an effort to prosecute him in criminal litigations which she had failed to prove. The feeling of deep anguish, disappointment, agony and frustration of the husband is obvious.”

34. *In U. Sree v. U. Srinivas (2013) 2 SCC 114 , the Court, taking note of the deposition of the husband that the wife had consistently ill-treated him inasmuch as she had shown her immense dislike towards his “sadhna” in music and had exhibited total indifference to him, observed as follows:*

“23. ... It has graphically been demonstrated that she had not shown the slightest concern for the public image of her husband on many an occasion by putting him in a situation of embarrassment leading to humiliation. She has made wild allegations about the conspiracy in the family of her husband to get him remarried for the greed of dowry and there is no iota of evidence on record to substantiate the same. This, in fact, is an aspersion not only on the character of the husband but also a maladroit effort to malign the reputation of the family.”

35. *In K. Srinivas Rao v. D.A. Deepa [(2013) 5 SCC 226, while dealing with the instances of mental cruelty, the Court opined that to the illustrations given in Samar Ghosh [(2007) 4 SCC 511] certain other illustrations could be added. We think it seemly to reproduce the observations:*

“16. ... Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.”

27. **Whether conviction of a respondent for the offence of murder and sentence of life imprisonment amounts to cruelty**

27.1 In *Sunita Devi v. Om Prakash* 174 (2010) DLT 471, the wife sought divorce on the grounds of cruelty and desertion caused by the husband who had illicit relationship with a lady named Geeta and he used to beat his wife mercilessly and secondly, the husband killed his illegitimate daughter born out of his illicit relationship with Geeta and he has been convicted under Section 302 IPC and sentenced to life imprisonment. The District Judge dismissed the petition against which the wife came in appeal before this Court. This Court allowed the appeal holding that the husband has caused mental pain of such a magnitude that it has severed the bond between husband and wife as a result of which it has become impossible for the wife to live with the husband. This Court further noted that although the judgment of conviction is a subsequent development but since an appeal is a continuation of the original petition, the same can be taken note for deciding the issue involved. Relevant portion of the said judgment is reproduced hereunder:

*“6. Section 13(1)(ia) of the Hindu Marriage Act, 1955 makes cruelty as a ground for divorce. The term ‘cruelty’ however has not been defined in the Act. The Court has to rest its decision on the facts and circumstances of each case on assessment of human nature and human affairs with due regard to social conditions and customs of the parties. Here it would be useful to the judgment of the Apex Court in the case of **Shobha Rani v. Madhukar Reddi**, (1988) 1 SCC 105, wherein it was held that:*

“Section 13(1)(i-a) uses the words “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 behaviour. 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 inquiry 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.”

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*8. Human emotions do not run on dotted lines. Every person has a different level of tolerance and sensitivity and certain allegations of cruelty levelled by one spouse may cause mental cruelty to his/her spouse and the same very allegations in some other case may not be considered of that magnitude to cause cruelty of such nature. Each case is dependent upon various factors; social, economic, family background, upbringing, education, etc. However, one thing which can be considered universal in all situations is that no spouse can tolerate his/her spouse having illicit relations or extra marital relations. It would be useful to refer to the judgment of the Apex Court in the case of **Naveen***

Kohli v. Neelu Kohli, (2006) 4 SCC 558 : AIR 2006 SCC 1675, here where it was held that:

“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. 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.”

9. *In the present case, from the facts on the record it is clearly borne out that **the respondent has caused mental pain of such a magnitude that it has severed the bond between the wife and husband and as a result of which it has become impossible for the appellant wife who has suffered to live with the other party. Thus the requirement of Section 13(1)(ia) stands fulfilled.** Therefore if a spouse is found living or having any kind of illicit relationship with any other person then such an act in itself is sufficient to prove cruelty on the part of such spouse. **Although the passing of the judgment of conviction is a subsequent development but since an appeal is a continuation of the original petition therefore the same can be taken into consideration for deciding the issue involved.**”*

(Emphasis supplied)

27.2 In *Vimla Bai v. Panchu Lal*, AIR 2007 Raj. 99, the wife was involved in a murder case, which was held to be cruelty by the Rajasthan High Court to grant divorce to the husband. Relevant portion of the said judgment is reproduced hereunder:

“11. Cruelty as a ground of divorce under Section 13(1)(ia) is a conduct of such type that the husband could not reasonably be expected to live with the wife. In our opinion, involvement of the appellant wife in a murder case amounts to cruelty and learned Family Court has rightly granted decree of divorce. We find no infirmity in the impugned judgment and decree.”

(Emphasis Supplied)

27.3 In *Ganesha v. Vijaya*, MFA 11864/2011 (F.C.), decided by Karnataka High Court on 12th March 2012, the wife sought divorce on the grounds of cruelty and desertion caused by her husband who was facing a charge of murder of one person and injuring others. The husband made false allegations against the wife that she had remarried one Nagaraja. The Sessions Court convicted the husband to seven years of imprisonment, which was enhanced to life imprisonment by the High Court. Karnataka High Court held that making false allegations of re-marriage against the wife amounts to mental cruelty. Karnataka High Court further held that the wife cannot be made to suffer for no fault of hers as the husband had been convicted for life. The relevant portion of the said judgment is reproduced hereunder:-

“7...That after the marriage, the appellant has been convicted for life and he is serving the sentence at Central Jail, Bellary. It is also his case that the wife has re-married to one Nagaraja and requested to bring Nagaraja as a party to the suit To show that the wife has married Nagaraja, no material is placed. In other words, such allegations amounts to mental cruelty. In the circumstances, we are of the view that the Trial court is justified in granting a decree of divorce on the ground of cruelty.”

8. *Be that as it may, when the appellant has been convicted for life, even the ground of desertion has to be taken into account legally because the appellant cannot live with the wife and give conjugal happiness to her. **For the rest of the life for no fault of the wife, she cannot be made to suffer, if the marriage tie being allowed even though the husband convicted for life. In the circumstances, it is not a case for interference.***

(Emphasis supplied)

27.4 In *Mohanan v. Thankamani*, ILR 1995 (1) Kerala 83 the wife was convicted for the offence of murder of two minor children, which was held to be sufficient to constitute cruelty to dissolve the marriage between the parties by the Kerala High Court. The relevant portion of the said judgment is reproduced hereunder: -

“2...Even a single act of violence which is of grievous and inexcusable in nature satisfies the test of cruelty. The allegation that the respondent had killed her children is not a matter to be trifled with, in the petition itself the allegation that the respondent had killed her children is specifically stated. Conviction by the Sessions Judge against the respondent under Section 302 of the Indian Penal Code is not a matter in dispute. Pendency of the appeal is not a mitigating factor. Eventual acquittal in the criminal case would not be sufficient to assuage the embittered feelings of the father (appellant). The single act of violence against the children establishes the cruel conduct of the respondent. Even if it is assumed that the respondent had not treated the appellant with cruelty the crime perpetrated against the children would certainly amount to cruelty to him also”

27.5 Section 27(1)(c) of the Special Marriage Act, 1954; Section 2(iii) of the Dissolution of Muslim Marriage, Act, 1939; and Section 32(f) of the Parsi Marriage and Divorce Act, 1936,

specifically provide the sentence of imprisonment for 7 years or more for an offence as defined in Indian Penal Code as a ground for divorce. The relevant provisions are reproduced hereunder:

27.5.1 **Special Marriage act, 1954**

“Section 27-Divorce

(1) *Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court either by the husband or he wife on the ground that the respondent-*

(c) is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code.”

27.5.2 **Parsi Marriage and Divorce Act, 1936**

“Section 32-Grounds for divorce

Any married person may sue for divorce on any one or more of the following grounds, namely:-

(f) that the defendant is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code”

27.5.3 **Dissolution of Muslim Marriage Act, 1939**

Section 2- Grounds for decree for dissolution of marriage

A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:

(iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards”

27.6 The matrimonial laws in following countries provide the conviction for a serious offence as a valid ground of divorce:

S. No	Name of the Country	Name of the Code and Section	Ground of Divorce	Hyper Link
1.	South	Divorce Act, 1979 ,	The defendant has, in terms of	http://www.justice.gov.z

	Africa	Sec. 4(2)(c)	a sentence of a Court has been declared a habitual criminal and is undergoing imprisonment as a result of such a sentence, as proof of the breakdown.	a/legislation/acts/1979-070.pdf
2.	Georgia (U.S.A)	2010 Georgia Code , Domestic Relations § 19-5-3	The conviction of either party for an offense involving moral turpitude, under which he is sentenced to imprisonment in a penal institution for a term of two years or longer	http://law.justia.com/codes/georgia/2010/title-19/chapter-5
3.	New York (U.S.A)	Domestic Relations Laws § 170(3). Action for divorce	The confinement of the defendant in prison for a period of three or more consecutive years after the marriage of plaintiff and defendant.	http://www.nycla.org/PDF/Domestic%20Relations%20Law%20Sections.pdf
4.	Arizona (U.S.A)	Title 25 - Marital and Domestic Relations –Article - 903 –Dissolution of a covenant marriage; grounds	The Respondent spouse has committed a felony and has been sentenced to death or imprisonment in any federal, state, country or municipal correction facility.	http://www.azleg.gov/ArizonaRevisedStatutes.asp?Title=25
5.	Illinois (U.S.A)	Illinois Marriage and Dissolution of Marriage Act - Sec. 401	“That, without cause or provocation by the petitioner: the respondent... or has been convicted felony of a felony or other infamous crime.”	http://law.justia.com/codes/illinois/2010/chapter750/075000050HPt_IV.html

6.	Texas (U.S.A)	Texas Family Code - Sec. 6.004	Conviction of Felony. (a) The court may grant a divorce in favor of one spouse if during the marriage the other spouse: (1) has been convicted of a felony; (2) has been imprisoned for at least one year in the Texas Department of Criminal Justice, a federal penitentiary, or the penitentiary of another state; and (3) has not been pardoned.	http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.6.htm
7.	Italy	The Law of 1 December 1970, No. 898, as amended by the Law of 1 August 1978, No. 436 and by the Law of 6 March 1987, No. 74,	Either of the spouses may apply for divorce: a. for any offence carrying a sentence of life imprisonment or imprisonment for more than 15 years, possibly as a result of multiple sentencing, for pre-meditated offences, apart from political offences and offences committed on specific moral or social grounds; b. for any offence carrying a custodial sentence for incest (section 564 of the Criminal Code) or violent sexual offences under sections 609bis (sexual violence), 609quater, 609quinquies, 609octies (introduced by Act No 66 of 1996); c. for any offence carrying a custodial sentence for murdering the spouse's	http://ec.europa.eu/civiljustice/divorce/divorce_ita_en.htm

			child(ren) or for attempted murder of the spouse or their child(ren); d. for any offence carrying a custodial sentence, where the person has been found guilty on two or more counts of grievous bodily harm, failure to fulfil family support obligations, abuse in the family or of minors or circumvention of an incapable harming the spouse or their child(ren), except where the applicant for divorce has been convicted on conspiracy or where it has been established that they are again living together);	
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27.7 Although the conviction of a person for murder has not been specifically made ground for divorce under the Hindu Marriage Act, but it would definitely amount to mental cruelty on the ground that it results in deprivation of conjugal rights, as well as food, shelter and security; and it would cause mental pain, agony and apprehension in the mind of other spouse that it would be harmful or injurious to live with the other.

28. **Appellate Court can consider the subsequent events**

28.1 It is well settled that the Appellate Court can take subsequent events into consideration to shorten the litigation between the parties and for doing complete justice to them. Although many judgments have been cited before this Court, the recent judgment of the Supreme Court in ***Dr. (Mrs.) Malathi Ravi v. Dr. B.V. Ravi***,

(supra) deals with this issue very exhaustively in a divorce case and is therefore, sufficient to decide this issue.

28.2 In *Dr. (Mrs.) Malathi Ravi v. Dr. B.V. Ravi* (supra) the husband sought dissolution of marriage on the ground of desertion under Section 13(1)(ia) of the Hindu Marriage Act, which was rejected by the family Court. The High Court, in appeal, took the subsequent events into consideration and dissolved the marriage by a decree of divorce. The wife approached the Supreme Court and urged that the ground of desertion was not established. It was further urged that the subsequent events relating to the cruelty could not have been considered by the High Court. The Supreme Court held that the subsequent conduct of the wife can be taken into consideration and the decree of divorce granted by the High Court was upheld on the ground of cruelty. Relevant portion of the said judgment is reproduced hereunder: -

24. ...It is settled in law that subsequent facts under certain circumstances can be taken into consideration.

25. In A. Jayachandra v. Aneel Kaur [(2005) 2 SCC 22] it has been held thus: (SCC p. 32, para 16)

“16. ... If acts subsequent to the filing of the divorce petition can be looked into to infer condonation of the aberrations, acts subsequent to the filing of the petition can be taken note of to show a pattern in the behaviour and conduct.”

26. In Suman Kapur v. Sudhir Kapur [(2009) 1 SCC 422 : (2009) 1 SCC (Civ) 204] this Court had accepted what the High Court had taken note of despite the fact that it was a subsequent event. It is necessary to reproduce the necessary paragraphs from the said decision to perceive the approach of this Court: (SCC pp. 437-38, paras 46-47)

“46. The High Court further noted that the appellant wife sent a notice through her advocate to the respondent husband during the pendency of mediation proceedings in the High Court wherein she alleged that the respondent was having another wife in USA whose identity was concealed. This was based on the fact that in his income tax return, the husband mentioned the social security number of his wife as 476-15-6010, a number which did not belong to the appellant wife, but to some American lady (Sarah Awegtalewis).

47. The High Court, however, recorded a finding of fact accepting the explanation of the husband that there was merely a typographical error in giving social security number allotted to the appellant which was 476-15-6030. According to the High Court, taking undue advantage of the error in social security number, the appellant wife had gone to the extent of making serious allegation that the respondent had married an American woman whose social security number was wrongly typed in the income tax return of the respondent husband.”

27. From the acceptance of the reasons of the High Court by this Court, it is quite clear that subsequent events which are established on the basis of non-disputed material brought on record can be taken into consideration. Having held that, the question would be whether a decree for divorce on the ground of mental cruelty can be granted. We have already opined that the ground of desertion has not been proved. Having not accepted the ground of desertion, the two issues that remain for consideration are whether the issue of mental cruelty deserves to be accepted in the obtaining factual matrix in the absence of a prayer in the relief clause, and further whether the situation has become such that it can be held that under the existing factual scenario it would not be proper to keep the marriage ties alive.

28. The learned counsel for the appellant has urged with vehemence that when dissolution of marriage was sought on the ground of desertion alone, the issue of mental cruelty can neither be raised nor can be addressed to. Regard being had to the said submission, we are constrained to pose the question whether in a case of the present nature we should require the respondent husband to amend the petition and direct the learned Family Judge to consider the issue of mental cruelty or should we ignore the fetter of technicality and consider the pleadings and evidence brought on record as well as the subsequent facts which are incontrovertible so that the lis is put to rest. In our considered opinion the issue of mental cruelty should be addressed to by this Court for the sake of doing complete justice. We think, it is the bounden duty of this Court to do so and not to leave the parties to fight the battle afresh after expiry of thirteen years of litigation. Dealing with the plea of mental cruelty which is perceptible from the material on record would not affect any substantive right of the appellant. It would be only condoning a minor technical aspect. Administration of justice provokes our judicial conscience that it is a fit case where the plenitude of power conferred on this Court under Article 142 deserves to be invoked, more so, when the ground is statutorily permissible. By such exercise we are certain that it would neither be supplanting the substantive law nor would it be building a structure which does not exist. It would be logical to do so and illogical to refrain from doing so.”

(Emphasis supplied)

28.3 In **Sunita Devi v. Om Prakash**, (supra) this Court took note of the judgment of conviction passed during the pendency of the appeal to grant the decree of divorce to the wife who was convicted under Section 302 IPC and was sentenced to life imprisonment.

Relevant portion of the said judgment is reproduced in para 27.1 above.

29. **False, scandalous and malicious allegations made in the written statement amount to cruelty**

29.1 In *V. Bhagat v. D. Bhagat* (1994) 1 SCC 337 the wife, in her written statement, alleged that the respondent was suffering from mental hallucination, that he was a morbid mind and needed expert psychiatric treatment and that he was suffering from paranoid disorder. The wife's counsel in her cross-examination suggested several questions to the husband that several members of his family, including her grandfather, were lunatics. The Supreme Court held the pleadings of the wife and the questions in cross-examination are bound to cause immense mental pain and anguish to the husband.

29.2 In *Vijay Kumar Ramchandra Bhate v. Neelam Vijaykumar Bhate*, (2003) 6 SCC 334, the husband made disgusting accusations of unchastity and indecent accusations against the wife with a neighbor in the written statement. The Supreme Court held that the allegations are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous to live with her husband.

29.3 In *Navin Kohli v. Neelu Kohli*, (2006) 4 SCC 558, the wife got an advertisement issued in the newspaper that her husband was her employee. She got another news item published cautioning his

business associates to avoid dealing with him. The Supreme Court treated all this as mental cruelty to the husband.

29.4 In *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226, the wife made false and defamatory allegations against her husband and his mother to the police. The wife also lodged a complaint with the Karnataka High Court where her husband was employed, seeking his removal from the job. The Family Court granted a decree of divorce, which was set aside by the High Court in appeal on the ground that the parties stayed together only for a day. The Supreme Court held that a spouse can cause mental cruelty by his/her conduct even while he or she is not staying under the roof. Staying together under the same roof was not a pre-condition for mental cruelty. Relevant portion of the said judgment is reproduced hereunder:

“16. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh[(2007) 4 SCC 511] , we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.

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29. In our opinion, the High Court wrongly held that because the appellant husband and the respondent wife did not stay together there is no question of the parties causing cruelty to each other. Staying together under the same roof is not a precondition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof. In a given case, while staying away, a spouse can cause mental cruelty to

the other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouse's life miserable. This is what has happened in this case.

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*30. It is also to be noted that the appellant husband and the respondent wife are staying apart from 27-4-1999. Thus, they are living separately for more than ten years. This separation has created an unbridgeable distance between the two. **As held in Samar Ghosh [(2007) 4 SCC 511], if we refuse to sever the tie, it may lead to mental cruelty.***

(Emphasis supplied)

29.5 In ***Hemwati Tripathi v. Harish Narain Tripathi***, (2011) 181 DLT 237, the husband leveled false, scandalous and malicious allegations against the wife that she had relationship with one *sadhu* and her stay out of the house during nights in the written statement which was held to be cruelty and wife was granted decree of divorce against the husband. Relevant portion of the said judgment is reproduced hereunder:

*“16. In the facts of the present case also despite the fact that the physical beating given by the respondent on many occasions by itself constitutes cruelty, but **the scandalous allegations leveled by the respondent attacking the moral character of the appellant or attributing her relationship with some Sadhu certainly amounts to worse form of cruelty in the absence of any corroboration to such allegations.** That the ratio of *Ashok Kumar v. Santosh Sharma* (supra) and *Savitri Balchandani* (supra) wherein it was held that a decree of divorce on the ground of cruelty can be passed on the strength of false, baseless, scandalous and malicious allegations in the written statement by one party on the other is thus found applicable to the facts of the present case because in the*

case at hand the husband has not led any evidence in support of his allegations.

...serious and malicious allegations of the appellant having relationship with one Sadhu and her staying out of the house during nights also leveled by the respondent and as per the settled legal position, casting such aspersions on the character of the other spouse has the affect of causing deleterious affect on the mind of such spouse and the same is a worse form of cruelty. It has not been denied by the respondent that no evidence was led by him to prove that the appellant used to go out during night to stay with that Sadhu.”

(Emphasis supplied)

29.6 In ***D.N. Sharma Sharma v. Usha Sharma*** AIR 2004 Delhi 198, the husband filed a petition for divorce against the wife who levelled false allegations against the husband having extra martial relations with a lady in the written statement which was held to be cruelty sufficient to dissolve the marriage between the parties. Relevant portion of the judgment of this Court is as under:

“2. In the written statement, the respondent besides denying the allegations of assault etc. upon the appellant also stated that the appellant wanted to get rid of the respondent in order to marry another lady Sushila Bist with whom the appellant was having affair for the last almost 20 years and for whom the appellant not only used to misbehave with the respondent but also forced her to leave the matrimonial home alongwith the daughter...

... It was also stated that the appellant was having an affair with Sushila Bist with whom he had even been going to hill stations secretly and was roaming with her openly. It was alleged that the appellant had even displayed his photographs with Sushila Bist in the drawing room and he had thrown to wind all norms of decency as he openly moved around and even used to bring her home in later

years in the presence of grown up daughters. It was alleged that the appellant was so engrossed with Sushila Bist that he totally neglected his family and started harassing them. It was also alleged that the appellant wanted to live with his mistress Sushila Bist after obtaining divorce and wanted to legalise her illegal deeds of secret marriage with the said lady.

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*16. In view of the aforesaid, in my opinion, writing letters to the authorities making slanderous allegations against the appellant, repeating the same not only in her own statement but also suggesting them to the appellant during the course of his cross-examination lends credence to the fact that the wife was persisting them to humiliate and wounding the feelings of the husband which have made impossible for him to live in the matrimonial home with the wife. **These allegations are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial life causing profound and lasting disruption driving the husband to feel deeply hurt and reasonably apprehend that it was impossible for him to live with the respondent.***

(Emphasis supplied)

29.7 In *Jay Dayal v. Shakuntala Devi* AIR 2004 Delhi 39, the wife sought divorce against the husband who levelled allegations of unchastity and indecent familiarity of the wife with different persons outside the wedlock and having extra martial relations with other persons in the written statement which was held to be cruelty which caused reasonable apprehension in her mind that it is dangerous to live with the husband. Relevant portion of the said judgment is reproduced hereunder:

“2. ... It was alleged that the appellant issued a legal notice dated 6.12.1996, levelling serious allegations of immorality on the petitioner and her having illicit relations with one Mr. Kishore Kumar and then filed a complaint dated 9.5.1997, with the Commissioner of Police levelling similar allegations...”

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9. ... It is thus clear that the appellant has levelled disgusting allegations of unchastity and indecent familiarity of the respondent with different persons outside wedlock and her having extra martial relations with other persons. These themselves, in my opinion, will amount to cruelty.

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11. In view of the foregoing these allegations without anything else by themselves, in my opinion, amount to the appellant treating the respondent with cruelty causing reasonable apprehension in her mind that it is dangerous to live with the appellant. In my opinion, therefore, the Trial Court was fully justified in dissolving the marriage of the parties by a decree of divorce and no case had been made out to interfere with the same...”

(Emphasis supplied)

29.8 In ***Ramesh Kumar v. Aakash Sharma***, II (2008) DMC 315, the husband sought divorce against the wife who levelled allegations in the written statement that the husband was having illicit sexual relation with sister-in-law. However, the wife could not prove or substantiate these allegations and therefore, it was held to be cruelty by the Himachal Pradesh High Court. Relevant portion of the said judgment is reproduced hereunder:

“21. The evidence on record leaves no doubt in my mind that the appellant has been subjected to constant mental

*cruelty by the respondent more especially her allegations of sexual misbehaviour and mis-conduct against the appellant accusing him of having illicit sexual relations with his sister-in-law (Bhabhi), for consideration, who is treating him like a younger brother. The evidence, clearly points out to the fact that the respondent has treated the appellant with cruelty within the meaning of the Act. **In terms of the pronouncement of the Hon'ble Supreme Court in Samar Ghosh's case, I am satisfied that not only has the marriage broken down irretrievably because of the acts on the part of the respondent, and it is not possible for the appellant to live in an atmosphere which is vitiated and surcharged by allegations of adultery etc.** Indian Society is sensitive to the relationships of brother and sister and mother and son which are not only respected but venerated. There has been no cohabitation between the parties since 1982.”*

(Emphasis supplied)

30. **Findings**

30.1 The conviction of the respondent and sentence of life imprisonment under Section 302 IPC for murder has caused mental pain, agony and apprehension in the mind of the petitioner that it is not safe to live with him and it clearly amounts to cruelty. The respondent's cruel act has also resulted in physical deprivation of matrimonial relationship which has caused physical and mental pain and torture.

30.2 The cruel offence of murder committed by the respondent has traumatized the petitioner for her life. The family of Gopal who was murdered by the respondent are not the only one's to live a life of self-denial, there are others too. The wife of the accused

also pays a huge price for her husband's crime. The society treats her as murderer's wife. Her honour is lost forever. Is there a greater punishment than bearing the burden of humiliation throughout one's life? Probably not.

30.3 The respondent's crime resulting in life imprisonment has opened up a chapter of profound uncertainty. Who will now earn and feed the petitioner? The respondent has not made any provision for her sustenance. The respondent's family is also not ready to support her. The conviction and life imprisonment of the respondent has resulted in the deprivation of the conjugal rights as well as food, shelter and security from the husband. The petitioner's life is on an endless slide backward. Admittedly, the petitioner is innocent and all this has happened due to the cruel act of the respondent. All this constitutes the worst form of cruelty which will continue unless the relationship is severed and therefore, it is in the interest of justice to dissolve the marriage by a decree of divorce to put an end to the endless misery and sufferings to enable her to live her own life.

30.4 Learned counsel for the respondent has raised a plea that the conviction of the respondent for the offence of murder under Section 302 IPC has not been specifically made a ground for divorce before the Trial Court and additional evidence led before this Court is beyond the pleadings. This Court is of the view that the petitioner had specifically pleaded in the divorce petition that the respondent has been arrested for the offence of murder in FIR No.111/2009, P.S. Timarpur, New Delhi under Sections 302/34 IPC. The trial of the criminal case had not concluded at that time.

The trial concluded during the pendency of the petition resulting in conviction of the respondent, which is not disputed. The respondent challenged his conviction before this Court in Criminal Appeal bearing 923/2011 which has been dismissed by this Court vide judgment dated 19th March, 2014. The respondent has led additional evidence before this Court to prove the conviction as well as the dismissal of the appeal. The judgment of the Sessions Court is Ex.AW-1/1 and the judgment of High Court in appeal is Ex.AW-1/2. It is well settled that this Court can take note of the subsequent developments to shorten the litigation between the parties and for doing complete justice to them. This case is squarely covered by the principles laid down by the Supreme Court in *Malathi Ravi v. Dr. B.V. Ravi*, (supra).

30.5 Learned counsel for the respondent has next contended that the petitioner has adduced additional evidence to fill up the lacuna. As discussed above, the petitioner had specifically pleaded in the petition for divorce that the respondent has been arrested for the offence of murder on 28th June, 2009. The respondent was convicted during the pendency of the petition and his appeal was dismissed during the pendency of the present appeal. The conviction of the respondent and dismissal of his appeal against conviction are subsequent events. The petitioner has led additional evidence to prove the certified copies of the judgments of the Sessions Court and High Court as Ex.AW-1/1 and Ex.AW-1/2 respectively. The petitioner has further proved that the conviction of the respondent and sentence to life imprisonment has caused

mental cruelty to the petitioner and, therefore, the foundation had already been laid by her in the pleadings before the Trial Court.

30.6 The respondent has made following serious allegations against the petitioner in his written statement:

- (i) The petitioner demanded Rs.5 lakh from the respondent to purchase a house for her parents whereupon the respondent's mother paid Rs.5 lakh to the petitioner who purchased a house bearing No.F-183A, Gali No.6, Wazirabad, Delhi for her parents;
- (ii) The petitioner threatened the respondent to transfer the title of the residential house in her name failing which she would implicate the respondent in a false case;
- (iii) The petitioner falsely implicated the respondent in a false murder case because the respondent refused to transfer the title of his mother's house in the name of the petitioner; and
- (iv) The respondent's mother handed over the locker keys to the petitioner on 5th November, 2009 while leaving for Agra. During that period, the petitioner took out the entire jewellery of about 8 to 10 *tolas* and cash of Rs.3 lakh from the locker and left from the matrimonial home.

30.7 Admittedly, the respondent has not led any evidence whatsoever to prove the aforesaid accusations made by him in the written statement. The respondent also did not put these accusations to the petitioner when she was in the witness box.

30.8 The allegations made by the respondent are of such quality, magnitude and sequence as to cause mental pain, agony and suffering amounting to cruelty in matrimonial relationship causing

profound and lasting disruption driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with the husband.

30.9 The scandalous allegations made by the respondent against the petitioner constitute grave assault on her character, honour, reputation and amounts to worse form of insult and cruelty which is sufficient by itself to substantiate cruelty in law.

30.10 The unfounded false allegations have been made by the respondent against the petitioner have not only caused harassment and humiliation to the petitioner but also affected her mental health and these acts of cruelty are sufficient to dissolve the marriage between the parties.

30.11 The respondent has alleged in the written statement that the petitioner wife has falsely implicated him in the murder case. The petitioner has placed on record the certified copy of the judgment of the Sessions Court, which is Ex.AW-1/1 and the judgment of this Court dismissing the respondent's appeal, which is Ex.AW-1/2. The Sessions Court and this Court in appeal have held that the respondent murdered Gopal on 28th June, 2009. The deceased Gopal had married Maina alias Anju on 04th November, 2008 and they were staying in Jhuggi No.1, Gali No.1, Wazirabad Village, Delhi, whereas the respondent and his brother were residing in Gali No.6 of the same village. Three months prior to the marriage, there was a quarrel between the respondent, his brother and mother with Gopal when the respondent had beaten up Gopal. On the second or third day of Gopal's marriage, the respondent and his associates set the jhuggi of Gopal on fire. On 28th June, 2009, the respondent

along with other persons gave a beating to Gopal, who fell down when the respondent lifted a big concrete stone and struck on the head of Gopal which resulted in his death. PW-3, Maina, wife of deceased and PW-6, Ram Dashrath, brother of the deceased were the eye witnesses to the murder, who have been believed by the Sessions Court as well as by this Court. This Court has gone through the judgment of the Sessions Court as well as the High Court. In his statement under Section 313 Cr.P.C., the respondent stated that he made a complaint against the deceased Gopal for theft of water motor and the wife of the deceased had threatened to implicate him in a false case, which has been rejected by the Sessions Court as well as by the High Court. The respondent also set up a plea of alibi, which was not believed by both the Courts. The petitioner herein had no role whatsoever in the said criminal case of murder and, therefore, accusation of false implication made by the respondent in his written statement is absolutely false. The respondent's false accusation against the petitioner that she has implicated the respondent in a false criminal case is such a grave act of cruelty which itself is sufficient to grant the decree of divorce.

30.12 As per the settled legal position, the false, baseless, scandalous and malicious allegations made by the respondent in his written statement against the petitioner has the effect of causing deleterious effect on the mind of the petitioner and is the worse form of cruelty. This case is squarely covered by the well settled principles laid down in *V. Bhagat v. D. Bhagat* (supra), *Vijay Kumar Ramchandra Bhate v. Neelam Vijaykumar Bhate* (supra),

Navin Kohli v. Neelu Kohli (supra), *K. Srinivas Rao v. D.A. Deepa* (supra), *Hemwati Tripathi v. Harish Narain Tripathi* (supra), *D.N. Sharma Sharma v. Usha Sharma* (supra), *Jay Dayal v. Shakuntala Devi* (supra), *Ramesh Kumar v. Aakash Sharma* (supra).

30.13 With respect to the respondent's contention that the petitioner cannot raise this ground of false and scandalous allegations in the written statement amounting to cruelty because she did not urge this ground before the Trial Court, this Court is of the view that the appeal being a continuation of the suit, this ground which arises out of the pleadings and evidence before the Trial Court and law on this issue being well settled, the petitioner is well within her right to raise this ground before this Court.

30.14 The petitioner has also proved other instances of cruelty mentioned in para 22 above which show that the respondent's conduct even during the pendency of this appeal was cruel.

30.15 After taking into consideration the conduct of the husband and all the circumstances of this case, this Court finds it impossible for the wife to live with her husband. The conduct complained of is so grave and weighty that there is an absolute impossibility that duties of married life can be discharged.

30.16 The marriage has broken down beyond repair and there is no possibility that the spouses can ever again live together as husband and wife. In such a situation, it is unrealistic and unfair that law should keep a marriage alive, which is an empty shell and dead for all practical purposes. The continuing of such an empty tie

will create more and more bitterness whereas dissolution of the marriage in such circumstances will end the miserable relationship once for all.

Conclusion

31. Taking all the facts and circumstances of this case into consideration, this Court is satisfied that the offence of murder committed by the respondent resulting in life imprisonment, has caused immense pain, agony and apprehension in the mind of the petitioner that it is not safe to stay with the respondent anymore which is sufficient to dissolve the marriage on the ground of cruelty. That apart, the respondent has also treated the petitioner with cruelty by leveling serious false, scandalous and defamatory accusations against her in the written statement, namely, that the petitioner demanded Rs.5 lakh from the respondent to purchase a house for her parents whereupon the respondent's mother paid Rs.5 lakh to the petitioner by which the petitioner purchased a house for her parents bearing No.F-183A, Gali No.6, Wazirabad, Delhi; the petitioner threatened the respondent to transfer the title of his residential house in her name failing which she would implicate the respondent in a false case; the petitioner falsely implicated the respondent in a false murder because the respondent refused to transfer the title of his mother's house in the name of the petitioner; the respondent's mother handed over the locker keys to the petitioner on 05th November, 2009 while leaving for Agra and the petitioner took out the entire jewellery of about 8 to 10 *tolas* of the respondent's mother and cash of Rs.3 lakh from the locker and left

from the matrimonial home on 05th November, 2009. The aforesaid false accusations leveled by the respondent in the written statement also constitute cruelty which is sufficient to grant the decree of divorce to the petitioner. This Court is thus satisfied that the petitioner is entitled to the decree of divorce on the ground of cruelty under Section 13(1)(ia) of Hindu Marriage Act, 1955.

32. The appeal is allowed. The impugned judgment and decree are set aside. The marriage between the petitioner and the respondent is dissolved by a decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

33. Copy of this judgment be given dasti to both the parties and amicus curiae under the signatures of Court Master.

**J.R. MIDHA
(JUDGE)**

JANUARY 29, 2015
rsk/dk