

HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on 16-02-2021Judgment delivered on 03-09-2021FAM No. 17 of 2018

[Arising out of judgment and decree dated 25-9-2017 passed by the Judge, Family Court, Rajnandgaon, in civil suit No.72-A/2011]

1. Shripal Meshram S/o Ramprashad Meshram Aged About 40 Years
R/o Village Dhangaon, Post Office Kumurda, Tehsil Chhuriya,
District Rajnandgaon, Chhattisgarh

---- Appellant

Versus

1. Urmila Meshram W/o Shripal Meshram Aged About 40 Years R/o
Amitabh Shrivastava, Advocate's House, Basantpur, Ward No.38,
Rajnandgaon, Tahsil And District Rajnandgaon, Chhattisgarh

---- Respondent

For Appellant	Mr. Aditya Bhardwaj, Advocate
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For Respondent	Mr. Rakesh Thakur, Advocate
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(Proceedings through Video Conferencing)

Hon'ble Mr. Prashant Kumar Mishra, Ag. CJ.

Hon'ble Mrs. Rajani Dubey, J.

CAV Judgment

The following judgment of the Court is delivered by ***Prashant Kumar Mishra, Acting Chief Justice.***

1. This appeal by the appellant/husband under Section 19(1) of the Family Courts Act, 1984 would call in question the judgment and decree passed by the Family Court, Rajnandgaon, refusing to dissolve marriage between the parties.

2. Earlier by judgment and decree dated 27-10-2014 passed by the Family Court, Rajnandgaon, in civil suit No.72-A/2011 allowed the suit of the husband (appellant herein) to dissolve the marriage between the parties. However, in FAM No.112 of 2014 preferred by the wife (respondent herein) the judgment and decree was set aside by this Court vide judgment dated 7-7-2017 and the matter was remitted back to the trial Court for rendering fresh judgment. The remand order was made for the reason that on the earlier occasion the trial Court had only reproduced all statements of witnesses made in the affidavit under Order 18 Rule 4 of the Code of Civil Procedure, 1908 (for short 'the CPC') and recorded finding in respect of cruelty without any discussion or appreciation of evidence. This Court found that in most of the paragraphs either pleadings have been reproduced or the statements made by the parties under Order 18 Rule 4 of the CPC were reproduced.
3. The facts of the case, in brief, are that the parties were married as per the customs and rites prevailing amongst Budda tribes in February, 2004. Two children namely; Tanishk & Divyanshi are born out of their wedlock. The respondent-wife left the matrimonial house and the company of the appellant-husband in July, 2010 and since thereafter she is residing with her children at Basantpur, Ward No.38, Rajnandgaon. At the time of marriage, the appellant was serving as Constable in 8th Battalion, Reserve Police, Rajnandgaon, whereas the respondent was working as Shiksha Karmi Grade III at Fafammar, therefore, the appellant obtained a house on rent at village Gendatola for her residence. In the initial stage of marriage their relation was normal, but, according to the appellant, after about six months, the respondent's behavior became cruel.
4. The appellant further pleaded that the respondent obtained loan for her brother from a local money lender by pledging her ornaments

and the said fact came to his notice when the money lender approached his father for repayment of loan. His father felt embarrassed as the respondent had obtained loan without seeking permission. At the time of Deepawali festival his father advised her not to do so, but the respondent lost her temper and made allegation that the appellant and his family members are greedy. She also used filthy language, which were derogatory for every woman and particularly for a daughter-in-law. The respondent thereafter started picking quarrels on petty issues. Her mother and sister also started interfering in the *inter se* dispute between the couple. One day, when he returned from duty, he did not find the respondent at home and hence he made enquiries from the land lady who informed that she had gone to her parental house as his son Tanishk was not feeling well. The appellant felt that the respondent is ignoring him as she has again moved out of house without informing him. He straightaway went to her parental home at Bijepaar and asked her why she left the house without informing him. On this the respondent started indecently abusing him and her mother (mother-in-law of the appellant) slapped him. On another occasion he went to another village for watching *Madai* and returned at about 10.00 pm, he called her loudly for opening the door, but the respondent did not open the door. He somehow opened the door with the help of neighbours and asked the respondent why she did not awake, but the respondent innuendo towards a man standing there and said that she will sleep with him in front of you (appellant). The appellant shocked by hearing all this.

5. The appellant also pleaded that when he wanted to make love with the respondent she objected; made indecent abuses and when he wanted to sleep, the respondent booted him. On another day, she came outside his office, which was informed by his colleague and on seeing he found that the respondent was there with two children and another man. She has brought his fully loaded SLR

service rifle under her saree, which was snatched from her by his colleague. The matter was reported in the newspaper on which he felt insulted. After the caste panchayat held in June, 2010 they started living together at village Dhangaon and stayed for one week. The appellant was feeling sad and furious due to rifle incident, but the respondent had no guilt and used to sing and laugh loudly. On being asked her as to whether she has no blush over such big incident she consumed phenyl and was admitted in District Hospital, Rajnandgaon. During investigation, the police recorded her statement. She is living separately since July, 2010. In the caste panchayat held on 13-3-2011 they were again directed to live together, which he could not comply because of the conduct and behavior of the respondent, therefore, the society socially boycotted him and his family.

6. The respondent filed her written statement and denied the material plaint allegations. She pleaded that due to problem of posting at different places she is living with her children at Rajnandaon. It is her case that the appellant thrown her out of the house after giving beating and retained the articles gifted at the time of marriage. She made allegation that the appellant's behavior is very rude and cruel from the inception. He used to extend threat of killing with his service rifle, therefore, she has deposited the same with the Department.
7. In course of the trial, the appellant examined himself as PW-1; Suraj Lal Banjare (PW-2); Ramprasad Meshram (PW-3); Tejpal Rana (PW-4); and Lakhan Lal Meshram (PW-5). On the other hand, the respondent examined herself as DW-1; Parwati Sahu (DW-2); Baldev Borkar (DW-3); and Bhuwan Lal Ramteke (DW-4).
8. On appreciation of evidence, the trial Court has dismissed the suit holding that the appellant has failed to make out a

case of commission of cruelty towards him by the respondent.

9. Learned counsel for the appellant argued that the finding in respect of cruelty is perverse. The number of incidents pleaded in the plaint and duly proved by the statement of witnesses are sufficient enough to hold that the respondent has committed marital cruelty on the appellant and it is difficult for them to live together. Learned counsel would further argue that the marriage has irretrievably broken down, therefore, the appellant is entitled for decree of divorce.
10. Learned counsel for the respondent, *per contra*, argued that the instances of cruelty, narrated in the plaint, are ordinary wear and tear of day-to-day life, which happens in the life of every married couple, therefore, the same does not amount to commission of cruelty.
11. We shall now cull out the principles settled by the Hon'ble Supreme Court to find out as to when a spouse is said to have committed marital cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act, 1955 (for short 'the Act, 1955').
12. A decree for divorce can be granted on the ground of cruelty, however, the word 'cruelty' has not been defined under the Act, 1955, therefore, the question as to what act or omission or conduct or behavior of a party to a marriage would constitute cruelty has to be understood in the facts and circumstances of each case.
13. It is the well settled proposition of law that 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 plaintiff with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the plaintiff to live with the other party and that

cruelty 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 plaintiff 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.

14. The guiding principles have been laid down by the Hon'ble Supreme Court in plethora of judgments. In ***Dr. N.G. Dastane v. Mrs. S. Dastane***¹, the Supreme Court noted that the enquiry has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent.

Lord Denning, ***L.J. in Kaslefsky v. Kaslefsky***² observed thus :

“If the door of cruelty were opened too wide, we should soon find ourselves granting divorce for incompatibility of temperament. This is an easy path to tread, especially in undefended cases. The temptation must be resisted lest we slip into a state of affairs where the institution of marriage itself is imperilled.”

15. The Hon'ble Supreme Court in ***V. Bhagat v. D. Bhagat (Mrs.)***³ held that mental cruelty in Section 13(1)(i-a) 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

1 (1975) 2 SCC 326

2 (1950) 2 All ER 398

3 (1994) 1 SCC 337

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.

In ***Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan and Another***⁴, the Hon'ble Supreme Court held that the concept of legal cruelty changes according to the changes and advancement of social concept and standards of living. With the advancement of our social conceptions, this feature has obtained legislative recognition, that a second marriage is a sufficient ground for separate residence and maintenance. Moreover, to establish legal cruelty, it is not necessary that physical violence should be used. Continuous ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the husband, and an assertion on the part of the husband that the wife is unchaste are all factors which lead to mental or legal cruelty.

16. Yet again in ***Gananath Pattnaik v. State of Orissa***⁵, the Supreme Court held that the concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs. 'Cruelty' for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty and harassment in a given case.

4 (1981) 4 SCC 250

5 (2002) 2 SCC 619

17. Similar observations have been made by the Hon'ble Supreme Court in *Parveen Mehta v. Inderjit Mehta*⁶, wherein the following has been held :

“21. Cruelty for the purpose of Section 13(1) (i-a) is to be taken as a behaviour 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 behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, 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 misbehaviour in isolation and then pose the question whether such behaviour 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.

18. In *Chetan Dass v. Kamla Devi*⁷, the Hon'ble Supreme Court observed that matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come

6 (2002) 5 SCC 706

7 (2001) 4 SCC 250

to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of 'irretrievably broken marriage' as a straitjacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case.

19. In *A. Jayachandra v. Aneel Kaur*⁸, the Hon'ble Supreme Court held 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 wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the 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 a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out,

8 (2005) 2 SCC 22

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, the 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.

20. In *Naveen Kohli v. Neelu Kohli*⁹, the Hon'ble Supreme Court held that the word "cruelty" 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. There may be instances of cruelty by unintentional but inexcusable conduct of any party. The cruel treatment may also result from the cultural conflict between the parties. Mental cruelty can be caused by a party when the other spouse levels an allegation that the petitioner is a mental patient, or that he requires expert psychological treatment to restore his mental health, that he is suffering from paranoid disorder and mental hallucinations, and to crown it all, to allege that he and all the members of his family are a bunch of lunatics. The allegation that members of the petitioner's family are lunatics and that a streak of insanity runs through his entire family is also an act of mental cruelty.
21. In *Sujata Uday Patil v. Uday Madhukar Patil*¹⁰, the Hon'ble Supreme Court held that the word "cruelty" and the kind or degree of "cruelty" necessary which may amount to a matrimonial offence has not been defined in the Act. What is cruel treatment is

9 (2006) 4 SCC 558

10 2007 AIR SCW 896

to a large extent a question of fact or a mixed question of law and fact and no dogmatic answer can be given to the variety of problems that arise before the court in these kind of cases. The law has no standard by which to measure the nature and degree of cruel treatment that may satisfy the test. It may consist of a display of temperament, emotion or pervasion whereby one gives vent to his or her feelings, without intending to injure the other. It need not consist of direct action against the other but may be misconduct indirectly affecting the other spouse even though it is not aimed at that spouse. It is necessary to weigh all the incidents and quarrels between the parties keeping in view the impact of the personality and conduct of one spouse upon the mind of the other. Cruelty may be inferred from the facts and matrimonial relations of the parties and interaction in their daily life disclosed by the evidence and inference on the said point can only be drawn after all the facts have been taken into consideration. Where there is proof of a deliberate course of conduct on the part of one, intended to hurt and humiliate the other spouse, and such a conduct is persisted, cruelty can easily be inferred. Neither actual nor presumed intention to hurt the other spouse is a necessary element in cruelty.

In *Manisha Tyagi v. Deepak Kumar*¹¹, the Supreme Court held that this is no longer the required standard. Now it would be sufficient to show that the conduct of one of the spouses is so abnormal and below the accepted norm that the other spouse could not reasonably be expected to put up with it. The conduct is no longer required to be so atrociously abominable which would cause a reasonable apprehension that it would be harmful or injurious to continue the cohabitation with the other spouse. Therefore to establish cruelty it is not necessary that physical violence should be used. However continued ill-treatment cessation of marital intercourse, studied neglect, indifference of

11 AIR 2010 SC 1042

one spouse to the other may lead to an inference of cruelty. However in this case even with aforesaid standard both the Trial Court and the Appellate Court had accepted that the conduct of the wife did not amount to cruelty of such a nature to enable the husband to obtain a decree of divorce.

In *Ramchander v. Ananta*¹², the Hon'ble Supreme Court has again held that instances of cruelty are not to be taken in isolation but cumulative effect of facts and circumstances emerging from evidence on record and then drawing a fair inference whether plaintiff has been subjected to mental cruelty due to conduct of other spouse has to be culled out.

22. The principle is, thus, settled that whether in the facts and circumstances of a given case, the plaintiff has been able to make out a case of grant of divorce on the ground of cruelty would depend upon the nature of pleadings and evidence in that case and there can be no straitjacket formula nor an exhaustive list of instances can be prepared, where cruelty is said to have been committed by one or other party to the marriage. Cruelty can also not be inferred by applying any formula because the said question is to be determined keeping in view the social status of the parties, their financial and other conditions, the atmosphere and the kind of employment or vocation which they carry out would all be important to inter whether on the given set of allegations it has become difficult for the plaintiff to live with the other side and the behavior of such degree which amounts to cruelty.
23. We shall now proceed to examine as to whether, in the case at hand, the appellant has been able to establish the ground of cruelty to succeed to obtain a decree of divorce on the basis of test laid down by the Supreme Court in the judgments as mentioned *supra*.

12 (2015) 11 SCC 539

24. There are seven instances of cruelty pleaded in the plaint. They are : (i) pledging ornaments by the respondent for obtaining loan for her brother without seeking permission or informing him or his parents; (ii) interference of her parents in their marital life; (iii) son Tanishk was taken out of house to another village in his absence, without his permission; (iv) using indecent and filthy language by the wife; (v) she did not open the door in the night when he returned from another village; (iv) threat to sleep with another man; and (vii) taking away his service rifle and bringing the same to his office, which was reported in the newspaper.
25. The above instances of cruelty appear to be normal wear and tear of marital life. Not seeking permission from him or his parents for pledging ornaments or for taking son Tanishk for treatment cannot amount to cruelty. Similarly, interference of her parents in marital life is not cruelty by the respondent. It usually happens in the life of every married couple and on most of the occasions, advises by elderly members of the family are treated as interference in the marital life. In so far as using indecent and filthy language by the wife is concerned, there is no independent corroborative evidence to this effect. As per the pleadings, this particular incident and the subsequent innuendo by the respondent-wife has happened in presence of neighbors, but surprisingly no independent witness has been produced by the appellant to prove this incident. With regard to the incident of bringing of service rifle with her to his office is concerned, the respondent-wife has explained that the appellant was threatening to shot her by using the service rifle, therefore, she had brought the rifle to deposit the same with the superior officers of the 8th Battalion. When specific question was put to him that the respondent wife had informed about this to Shri H.P. Rathore, Battalion Commander, the appellant denied to have any knowledge about this. Thus, none of the instances of cruelty, pleaded in the plaint, would amount to commission of cruelty

within the meaning of Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act, 1955') nor does it satisfy the legal requirement of establishing the marital cruelty.

26. The trial Court has discussed the entire evidence and has reached to the finding that the appellant has failed to prove the cruelty. We have not found that the appreciation of evidence and the findings recorded by the trial Court are perverse. The impugned judgment and decree is just and proper warranting no interference of this Court.
27. In so far as ground of irretrievable breakdown of marriage is concerned, the same is not enumerated as ground for seeking divorce under Section 13, therefore, under appellate jurisdiction, we cannot allow a decree of divorce on a ground not covered under Section 13 of the Act, 1955.
28. As an upshot, the appeal, *sans substratum*, is liable to be and is hereby dismissed, leaving the parties to bear their own cost(s).
29. A decree be drawn accordingly.

Sd/-

(Prashant Kumar Mishra)
Acting Chief Justice

Sd/-

(Rajani Dubey)
Judge

Gowri