



1 FA-683-2023

IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE  
HON'BLE SHRI JUSTICE VIVEK RUSIA  
&  
HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI  
ON THE 22<sup>nd</sup> OF AUGUST, 2024  
FIRST APPEAL No. 683 of 2023

*Versus*

.....  
Appearance:

*Shri Nipun Choudhary - Advocate for appellant.*

*Shri Siddharth Jain - Advocate for respondent.*

.....

JUDGMENT

*Per. Justice Binod Kumar Dwivedi*

This appeal under Section 19(1) of the Family Courts Act, 1984 (for short hereinafter referred as, 'Act of 1984') has been filed assailing the impugned judgment and decree dated 03/09/2020 passed in RCS/HM/47/2020 by Principal Judge, Family Court, Dhar, District Dhar (M.P.), whereby marriage between the appellant / wife and respondent / husband has been dissolved under Section 13(1)(i a) and 13(1)(i b) of the Hindu Marriage Act, 1955 (for short hereinafter referred as, 'Act of 1955').

2. It is undisputed that marriage between appellant and husband was solemnized on 09/05/2017 according to Hindu traditions and customs at Village Darjanpura, Tehsil Mhow, District Indore. It is also not in dispute that appellant / wife was proceeded *ex parte* on 14/07/2022 when she neither



personally nor through her counsel marked her appearance before the learned Family Court even after service of notice through registered AD mode.

3. The case in brief is that after some time of solemnization of marriage, appellant / wife started misbehaving with respondent / husband, his mother and father. She was always threatening to implicate them in a false case of demand of dowry. She got terminated pregnancy without his consent and on her own will went to reside with her parents without any sufficient reason. For the first time, she lived only for 15 days in the matrimonial house and came back in October, 2017, but after 15-20 days she again left the matrimonial house despite refusal of the appellant. On 12/11/2017, the appellant / wife lodged a false FIR against the respondent / husband, his sister, mother and father on the ground of cruelty and demand of dowry at Police Station Sagaur. Respondent, his sister and parents have been acquitted by the Court concerned on 05/11/2019 from the false charges levelled against them. The appellant has deserted the respondent for more than three years and deprived him for cohabitation. On these grounds, petition for divorce under Section 13 of Act of 1955 was filed by the respondent / husband.

4. Despite service of summon through registered AD mode, the appellant / wife did not turn up for filing her defence and therefore, she was proceeded *ex parte* on 14/07/2022.

5. Learned Court below after framing relevant issues for adjudicating the petition took evidence as adduced by the husband and on completion of the evidence rendered impugned judgment dissolving the marriage between



appellant and respondent on the grounds as mentioned herein above.

6. Learned counsel for the appellant taking exception to the judgment and decree passed by the Family Court submit that she has not been given opportunity to participate in the proceeding. Learned Family Court has committed grave error of law and facts in not properly appreciating the evidence. After proceeding *ex parte* on 14/07/2022 decree has been passed on 03/09/2022 in exceptional hurry. Allegations raised against the respondents are absolutely frivolous and vexatious, which do not found support from the evidence adduced. She has never misbehaved with the respondent or his family members. On this miscellaneous grounds, learned counsel for the appellant urge this Court for setting aside the impugned judgment and decree by allowing her appeal.

7. *Per contra*, learned counsel for the respondent / husband submits that judgment and decree passed by the Court below is based on due appreciation of evidence available on record. Ground of cruelty as mentioned under Section 13 of the Act of 1955 has been duly proved by him by adducing cogent and reliable evidence, which has found favour from the Court below. Learned counsel for the respondent further submits that appellant could not rebut factum of her summons through registered AD mode on her, therefore, she cannot raise any complaint against the *ex parte* proceeding as drawn by the Court below. On these contentions, learned counsel prays for dismissing the appeal as devoid of substance.

8. Heard rival submission as raised by learned counsel for the parties and perused the record.



9. To appreciate the rival contentions, it is apposite to reproduce Section 13 of the Act of 1955 as ground for divorce, as under:

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

.....

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

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

...."

10. Term 'cruelty' in compasses in its purview mental and physical cruelty for the purpose of Section 13 of the Act of 1955. Hon'ble the Apex Court in catena of judgments has elaborated as to what type of acts may come under purview of cruelty. In case of **Shobha Rani v. Madhukar Reddi** reported in (1988) 1 SCC 105 : 1988 SCC (Cri) 60 at page 108 , the Apex court has made some observations with regard to the term cruelty which may profitably be reproduced here as they are still relevant :

"4. 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 enquiry must begin as to the nature of the



cruel treatment. Second, the impact of such treatment on 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.

5. It will be necessary to bear in mind that there has matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents. Because as Lord Denning said in *Sheldon v. Sheldon* [(1966) 2 All ER 257, 259] “the categories of cruelty are not closed”. Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (*sic*) realm of cruelty.”



11. In the case of **V. Bhagat Mrs. D. Bhagat** reported in (1994) 1 SCC 337: AIR 1994 SC 710, Supreme Court in para 16 has held as under:-

“16. 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 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.”

12. Similarly in case of **Ravi Kumar v. Julmidevi** reported in (2010) 4 SCC 476, the apex court reiterated that cruelty in matrimonial cases may be of so many forms. Para 19 to 21 may be reproduced to elucidate the concept of cruelty in matrimonial cases:

“19. It may be true that there is no definition of cruelty under the said Act. Actually such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a



matrimonial relationship may take the form of violence, sometime it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty.

20. Therefore, cruelty in matrimonial behaviour defies any definition and its categories can never be closed. Whether the husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any predetermined rigid formula. Cruelty in matrimonial cases can be of infinite variety—it may be subtle or even brutal and may be by gestures and words. That possibly explains why Lord Denning in *Sheldon v. Sheldon* [(1966) 2 WLR 993 : (1966) 2 All ER 257 (CA)] held that categories of cruelty in matrimonial cases are never closed.

21. This Court is reminded of what was said by Lord Reid in *Gollins v. Gollins* [1964 AC 644 : (1963) 3 WLR 176 : (1963) 2 All ER 966 (HL)] about judging cruelty in matrimonial cases. The pertinent observations are : (AC p. 660)

“... In matrimonial cases we are not concerned with the reasonable man as we are in cases of negligence. We are dealing with this man and this woman and the fewer a priori assumptions we make about them the better. In cruelty cases one can hardly ever even start with a presumption that the parties are reasonable people, because it is hard to imagine any cruelty case ever arising if both the spouses think and behave as reasonable people.”

The aforesaid passage was quoted with approval by this Court in *N.G. Dastane (Dr.) v. S. Dastane* [(1975) 2 SCC 326] ”.

13. The above observations are intended to emphasize that the Court in matrimonial cases is not concerned with ideals in family life. The Court has only to understand the spouses concerned as nature made them, and consider their particular grievance. As Lord Reid observed in *Gollins v. Gollins* reported in (1963) 2 All ER 966, 972 as under:



“In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with *this* man or *this* woman.”

14. Chandrachud, J. (as he then was) in **N.G. Dastane v. S. Dastane** reported in (1975) 2 SCC 326, 338 : AIR 1975 SC 1534 : (1975) 3 SCR 967, 978 in para 32 observed as:

“The court has to deal, not with an ideal husband and an ideal wife (assuming any such exist) but with the particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court for, even if they may not be able to drown their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures.”

15. In case of **Samar Ghosh Vs Jaya Ghosh** reported in (2007) 4 SCC 511 allowing the appeal, the Supreme Court in para 98 to 101 has held as under:

“98. On proper analysis and scrutiny of the judgments of this Court and other courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of “mental cruelty” within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, 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 while taking aforementioned factors in consideration.

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(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.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(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.



(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-today life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.



(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

16. It has also been held in **Samar Ghosh (supra)** where on facts there has been irretrievable breakdown of marriage, the party opposing the divorce and not letting go the other party free of the matrimonial bond, would be causing mental cruelty to the other party. This makes considerable sense in the Indian context where to reach finality by exhausting the remedy of appeals may take several years. In such situation the party opposing the grant of divorce may, in some cases, be doing so only out of spite, either to harass the other party or prevent it from remarrying or out of sheer cussedness. That may indeed also confirm the allegation that such party had been causing mental cruelty, and was now intent on causing further mental cruelty by opposing the divorce.

17. Relying upon judgment in **Shobha Rani (supra)** in **A Jaychandra Vs. Aneel Kaur** reported in (2005) 2 SCC 22 allowing the appeals, the Supreme Court in para 10 to 14 held as under:



“10. 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, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

11. The expression “cruelty” has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course



or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. (See *Shobha Rani v. Madhukar Reddi* [(1988) 1 SCC 105 : 1988 SCC (Cri) 60 : AIR 1988 SC 121] .)

12. 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 an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle



the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

13. 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.

14. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too



technical and hypersensitive approach would be counterproductive to the institution of marriage. The courts do not have to deal with ideal husbands and ideal wives. It has to deal with a particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court. [See *N.G. Dastane (Dr.) v. S. Dastane* [(1975) 2 SCC 326 : AIR 1975 SC 1534] .]”

18. In case of **Ramchander v. Ananta** reported in [(2015) 11 SCC 539 Supreme court in para 10 has held that cruelty can be inferred from the fact and circumstances

“10. The expression “cruelty” has not been defined in the Hindu Marriage Act. 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 a 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. Cruelty can be physical or mental. In the present case there is no allegation of physical cruelty alleged by the plaintiff. What is alleged is mental cruelty and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. *It is settled law that the instances of cruelty are not to be taken in isolation but to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the plaintiff has been subjected to mental cruelty due to conduct of the other spouse. In the decision in Samar Ghosh case [Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511] this Court set out illustrative cases where inference of “mental cruelty” can be drawn and they are only illustrative and not exhaustive.*”

19. Respondent by filing certified copy of impugned judgment and decree in Criminal Case No.2015/2017 under Section 498-A of Indian Penal Code, 1860 and Section 3/4 of Dowry Prohibition Act, 1961 has proved that



criminal case was lodged at the behest of appellant / wife in which ultimately appellant, his sister and parents were acquitted by the parties. Learned Court below relying upon the judgment in the case of **Vandana Gupta Vs. Ramesh Gupta** reported in 2009 (2) MPLJ 214, **Madhuri Aaswani Vs. Arjundas Aaswani** reported in 2007 (3) MPLJ 550 and **Vishwanath Agrawal Vs. Sarla Agrawal** reported in AIR 2012 SC 2586 concluded that prosecution of husband and her relatives on the false allegation of demand of dowry comes under mental cruelty. The findings recorded by the learned Court below are impregnable and infallible. The second ground of decree for divorce is under Section 13(1)(i a) and 13(1)(i b) on the ground of desertion for a period of one or more year, that they have not been able to live together.

20. Appellant (PW-1) by way of statement on affidavit has asseverated that respondent after solemnization of marriage came to matrimonial house only for twice and lived there only for 12-15 days and on being pregnant without informing him went to her parental house and refused to come back. She is residing with her parents from the year 2017. He has further stated that even after having knowledge of this case, she did not appear before the Court. She has no reason to live away with him. The evidence tendered for substantiating the ground of desertion has also been proved by unrebutted evidence of the appellant.

21. Learned Court below has recorded the finding that termination of pregnancy without consent of husband also comes under the purview of cruelty. With regard to the aforesaid finding, this Court is of the view that termination of pregnancy may come under the term 'cruelty' depending upon





the facts and circumstances of the case.

22. In light of the aforesaid discussion and exposition of law by the Apex Court in various judgments mentioned hereinabove, this Court is of the considered view that learned Court below has committed no factual or legal error in passing the impugned judgment. Judgment and decree passed by the Court below on twin grounds as enshrined under Section 13(1)(i a) and 13(1)(i b) is based on cogent and reliable evidence, needs no interference by way of this appeal. It is only the wife, who has ruined her family life by her own misdeeds as mentioned hereinabove, which became a ground for decree of divorce.

23. Consequently, this appeal *sans* merits, fails and is hereby dismissed. No order as to costs.

Certified copy as per rules.

(VIVEK RUSIA)  
JUDGE

सत्यमेव जयते

(BINOD KUMAR DWIVEDI)  
JUDGE