SUPREME COURT OF INDIA

G.V.N. Kameswara Rao

Vs.

G. Jabilli

C.A.No.140 of 2002

(D.P. Mohapatra and K.G. Balakrishnan JJ.)

10.01.2002

JUDGMENT

K.G. Balakrishnan, J.

1. Leave granted.

2. The husband who had been unsuccessfully fighting litigation for the past more than 15 years for snapping his marital ties with the respondent wife is the appellant before us. The appellant is double doctorate holder -- one in Mathematics from Andhra University and another from U.S.A., and had been working in United States during the relevant period. The respondent is a post- graduate in Home Science and was working as a lecturer in the year 1979. The appellant came to India in 1979 and gave advertisement in the newspaper seeking matrimonial alliance from a suitable bride. The relatives of the respondent responded to the advertisement and there was mutual consultation between the parties, which led to the marriage of the appellant with the respondent on 30.7.1979. After the marriage, the appellant and respondent stayed together for some period and thereafter, the appellant left India for United States. The respondent was asked to join him after having obtained the visa and completing other formalities. The respondent, after a period of six months, joined the appellant in United States. It appears that the marital life of the appellant and the respondent ran into rough weather from the very beginning of their stay in United States. There used to be occasional quarrel between the parties. A daughter, Sandhya, was born to them on 10.6.1981. In 1982, the appellant, respondent and their daughter Sandhya came to India, but the appellant returned to United States in November 1982 itself and the respondent joined him only in April 1983. In January 1985, the respondent along with her daughter returned to India and it seems that the misunderstandings between the parties deepened and ultimately the appellant filed application for divorce under Section 13 of the Hindu Marriage Act, 1955 alleging that after the solemnization of their marriage, the respondent treated the appellant with cruelty.

3. The respondent contested the proceedings and denied all the allegations made by the appellant in the petition and also made counter-allegations alleging that the appellant was responsible for wrecking the marriage. Parties on either side examined witnesses to

substantiate their allegations. The learned Family Court Judge after assessing the rival contentions and the evidence adduced by the parties, came to the conclusion that the respondent had treated the appellant with mental cruelty and, therefore, the appellant was entitled to get a decree for dissolution of marriage. This was challenged by the respondent before the Hon'ble High Court of Andhra Pradesh and the Division Bench of the High Court reversed the decision of the Family Court holding that the appellant was at fault and he had been trying to take advantage of his own wrongs; hence, he was not entitled to get a decree in his favour in view of Section 23(1)(a) of the Hindu Marriage Act. The Judgment of the Division Bench is challenged before us.

4. We heard learned Senior Counsel for the appellant, Mr. L. Nageswara Rao and Mr. M.N. Rao, learned Counsel on behalf of the respondent. The learned senior Counsel for the appellant contended that there was complete breakdown of the marriage due to the attitude of the respondent and the appellant was under severe mental agony and that the various acts committed by the respondent amounted to mental cruelty and the High Court was not justified in reversing the finding of the Family Court. The learned Counsel for the respondent, on the other hand, contended that there were differences of opinion between the appellant and the respondent on many matters, but the respondent had not done anything to cause mental pain or agony to the appellant. It was argued that the Family Court Judge passed his decision based on a solitary incident and, therefore, the same had been rightly reversed by the High court.

5. For proper appreciation of the disputes between the parties, it is necessary to consider the various allegations made by the appellant in his petition and also the counter-allegations made by the respondent in her reply. The appellant alleged that respondent entered into marriage with the appellant because of the persuasion of her sisters and brother and that the respondent was not taking any interest or co-operating to have a happy married life. The appellant alleged that the respondent joined him in the United States after a period of six months unwillingly, and right from the beginning of her life in United States, she picked up quarrel with the appellant and created scenes on many occasions. The appellant alleged that it was known to the Indian community, mainly to the people of Andhra Pradesh, who had settled down in and around the area where the appellant was residing, that the respondent was not having a good relationship with the appellant. He also alleged that the respondent was not doing any household work and the appellant had to do all the work himself and his brother Ravi, who was staying with him, was helping him. The appellant alleged that the respondent used to insult the appellant in the presence of his friends and guests and that the respondent was taking no interest in sharing bed with the appellant and this caused mental and physical agony to the appellant.

6. The respondent had denied all these allegations made by the appellant in the petition and she also made counter-allegations. But it is pertinent to note that the respondent has no case that they were having a happy married life and the attempt of the respondent was to put the blame at the doorstep of the appellant. She stated that the appellant had no interest to live with the respondent and was all the time attending parties, watching TV and playing cards and the respondent was completely neglected by the appellant. The respondent alleged that

the appellant used to treat her as an intruder. The respondent also stated that she was not given proper medical aid when she was in labour pain and had to give pre-mature birth to the baby without any medical assistance.

7. It is true that the Family Court rightly found that all the allegations made by the appellant in the petition were not satisfactorily substantiated by him. But nevertheless, some glaring facts are to be noted in this case. The married life of the appellant and respondent started in 1979 and right from the very beginning, the parties were under severe mental stress. Both the parties mutually tried to put the blame on each other. In 1982, the appellant, the respondent and their daughter returned to India. The respondent, however, refused to accompany the appellant back to the United States, and according to the appellant, she threw up the visa and other papers at him and joined him in United States only in 1983 and the subsequent evidence shows that the respondent had not willingly joined the appellant. She came back to India with her daughter in 1985. Though the appellant stated that the appellant's nephew, Ramu received her, she refused to talk to him and left with her own relatives. The respondent has denied these facts. However, it is important to note that the appellant has alleged that he did not know the whereabouts of the respondent and his child, at least for some period, after they returned to India. This is evident from the fact that the appellant wrote two letters to his daughter and these letters had to be re-directed to the address of the appellant. She was staying at Araku Valley, which was evidently not known to the appellant. The appellant stated that he suffered severe mental torture and, only after some searching inquiry, he could come to know that she was staying with her sister at Araku Valley. The appellant along with his two relatives went to Araku Valley to persuade the respondent to join the society of the appellant, but the very entry of the appellant and his relatives to the house was prevented by the respondent and later, only at the intervention of her sister, Suryakantham, they were permitted to enter the house. It may be noticed that the respondent and her child left United States in January 1985. The nature of the treatment meted out to the appellant by the respondent, even when he was meeting her after an interval of one year, is satisfactorily proved by the evidence of PW4 and his evidence was completely accepted by the Family Court Judge. The appellant being highly educated person having a position in life must have felt serious humiliation. The incident also shows that the respondent did not extend courteous behaviour to the appellant even in the presence of others. The conduct of the respondent assumes importance as this incident happened when they both were meeting each other after a long lapse of time.

8. Another important incident, which found favour with the Family Court is that the respondent had filed a criminal complaint before the police alleging that she was beaten by the appellant and his mother. The appellant and his mother were called to the police station and they had to be there for more than 10 hours. The explanation offered by the respondent for this incident is far from satisfactory. According to the respondent, she was being ill-treated by the appellant and his mother, and on one day, while preparing the breakfast when she used the blender for grinding the pulses, her mother-in-law got angry and scolded her saying that she had not brought any article from her house, so she should not have used the blender. Further, the respondent alleged that the appellant and his mother threw away all her bags and clothes and the appellant's mother asked her son to get the respondent out and the

appellant became wild and gave a blow to the respondent with a sharp-edged weapon and it was under those circumstances that with bleeding injuries, she had gone to the police station and filed a complaint before the police. It is important to note that police did not register any case evidently as it was a domestic quarrel and not of a serious nature, and the incident shows the innate lack of self-control which had driven the respondent to this exorable conduct. But the humiliation and agony suffered by the appellant and his mother, considering their status in life and the social circumstances, was too much.

9. Under Section 13(1) (ia) of the Hindu Marriage Act, on a petition presented either by the husband or wife, the marriage could be dissolved by a decree of divorce on the ground that the other party has, after the solemnization of the marriage, treated the petitioner with cruelty. 'Cruelty' is not defined in the Act. Some of the provisions of the Hindu Marriage Act were amended by *Hindu Marriage Laws (Amendment) Act, 1976*. Prior to the amendment, 'cruelty' was one of the grounds for judicial separation under Section 10 of the Act. Under that Section, "cruelty" was given an extended meaning by using an adjectival phrase, viz. "as to cause reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party". By the Amendment Act of 1976, "cruelty" was made one of the grounds for divorce under Section 13 and relevant provision reads as follows:-

> "Divorce (1) Any marriage solemnized, whether before or after the commencement of the Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party
>
> (i) . (ia) has, after the solemnization of the marriage, treated the petitioner with cruelty, or
> (ib) .. (ii)-(ix) "

10. The omission of the words, which described 'cruelty' in the unamended Section 10 of the Hindu Marriage Act, has some significance in the sense that it is not necessary to prove that the nature of the cruelty is such as to cause reasonable apprehension in the mind of the petitioner that it would be harmful for the petitioner to live with the other party. English Courts in some of the earlier decisions had attempted to define "cruelty" as an act which involves conduct of such a nature as to have caused damage to life, limb or health or to give rise to reasonable apprehension of such danger. But we do not think that such a degree of cruelty is required to be proved by the petitioner for obtaining a decree for divorce. Cruelty can be said to be an act committed with the intention to cause sufferings to the opposite party. Austerity of temper, rudeness of language, occasional outburst of anger, may not amount to cruelty, though it may amount to misconduct.

11. This Court, in Dr. N. G. Dastane vs. Mrs. S. Dastane AIR 1975 SC 1534 held at page 154, paragraph 34 as follows:-

> "We do not propose to spend time on the trifles of their married life. Numerous incidents have been cited by the appellant as constituting cruelty but the simple

> trivialities which can truly be described as the reasonable wear and tear of married life have to be ignored. It is in the context of such trivialities that one says that spouses take each other for better or worse. In many marriages each party can, if it so wills, discover many a cause for complaint but such grievances arise mostly from temperamental disharmony. Such disharmony or incompatibility is not cruelty and will not furnish a cause for the dissolution of marriage. We will therefore have regard only to grave and weighty incidents and consider these to find what place they occupy on the marriage canvas."

12. The Court has to come to a conclusion whether the acts committed by the counter-petitioner amount to cruelty, and it is to be assessed having regard to the status of the parties in social life, their customs, traditions and other similar circumstances. Having regard to the sanctity and importance of marriages in a community life, the Court should consider whether the conduct of the counter- petitioner is such that it has become intolerable for the petitioner to suffer any longer and to live together is impossible, and then only the Court can find that there is cruelty on the part of the counter-petitioner. This is to be judged not from a solitary incident, but on an overall consideration of all relevant circumstances.

13. This Court had an occasion to consider this question in some cases.

14. In *S. Hanumantha Rao vs. S. Ramani*[1], the husband alleged that the respondent wife had no interest in the marriage life and within a period of two months of the marriage, she went back to her parents house and stayed there for two and a half months. After about six months, she took off her mangalsutra and threw it at the appellant. The respondent wife explained that she removed the mangalsutra in privacy and handed over the same to the appellant on his own request. This Court held that removal of mangalsutra would not constitute cruelty within the meaning of Section 13(1)(ia).

15. In *V. Bhagat vs. D. Bhagat(Mrs.)*[2], the husband was a practicing lawyer and the respondent wife was working in a television company at the time of marriage. They had a grown up son and a daughter. The husband alleged adultery on the part of the respondent. Respondent wife denied the allegations and she also suggested that the appellant was suffering from some mental hallucination. This Court, in paragraph 16 at page 347, observed as under:-

> "The mental cruelty in Section 13(1)(ia) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts

and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must be had to the context in which they were made."

16. The case of the appellant that he had been subjected to cruelty by the wife is not put as such solely on the basis of one or two incidents. Their marriage life started in 1979 with so many ups and downs. Both of them did not live together for a longer period as happily married couple. The appellant has succeeded in proving that the attitude of the respondent was not cordial and cooperative. The respondent also alleged that their marriage life was not happy and cheerful. The way in which the appellant was treated by the respondent when he visited her sister's house at Araku Valley and the subsequent filing of the criminal complaint whereby the appellant was subjected to severe humiliation would go to show that the respondent was not prepared to extend any kind of cooperation to the appellant. The respondent's allegation that she was physically assaulted by the appellant and his mother is not very convincing. The fact that there was a bleeding injury on her hand was taken note of seriously by the High Court but the question is, in those circumstances, would an ordinary prudent person rush to the police station and file a complaint to see that her husband and his mother be kept in police custody for unduly long hours. These incidents throw an insight into her past conduct when she was staying with the appellant. The mental cruelty faced by the appellant is to be assessed having regard to his status in his life, educational background, the environment in which he lived. The appellant could have suffered traumatic experience because of the police complaint and the consequent loss of reputation and prestige in the society. Married life of the appellant with the respondent had never been happy. The appellant would say that from 1985 onwards, he has not been having conjugal relationship with the respondent and even prior thereto the respondent was not properly discharging her marital obligations.

17. The High Court has held in the impugned judgment that the appellant himself was responsible for many of the unhappy incidents and therefore, he shall not be allowed to take advantage of his own fault and the decree for dissolution of marriage shall be denied to him in view of Section 23(1)(a) of the Hindu Marriage Act. We do not think that the High Court was justified in holding this view. The decision was based on the fact that the appellant had executed a power of attorney in favour of his brother-in-law, Rama Rao, authorizing him to take steps for seeking divorce in the year 1982. The appellant admitted having executed that power of attorney. According to the appellant, the respondent, after she came to India in 1982, refused to come back to United States even after much persuasion and under those circumstances, he executed the power of attorney, but later on came to know that power of attorney holder could not file an application. That would only show that right from 1982, the relationship between the appellant and the respondent was not good and the parties thought of divorce. But the appellant did not file any application in 1982. As regards the incident relating to police complaint also, in his statement the appellant had admitted that the respondent had a scratch injury. But there is nothing in the evidence to show that either the appellant or his mother caused any serious injury to the respondent.

18. We do not think that this is a case, where the appellant could be denied relief by invoking Section 23(1)(a) of the Hindu Marriage Act. On the other hand, various incidents brought out in the evidence would show that the relationship between the parties was irretrievably broken, and because of the non-cooperation and the hostile attitude of the respondent, the appellant was subjected to serious traumatic experience which can safely be termed as 'cruelty' coming within the purview of Section 13(1)(ia) of the Hindu Marriage Act. Therefore, we hold that the appellant is entitled to the decree for dissolution of marriage under Section 13(1)(ia) of the Hindu Marriage Act. However, we make it clear that any order of maintenance passed in favour of the respondent will stand unaffected by this decree for dissolution of the marriage. We also make it clear that if any rights have been accrued to the respondent in the joint assets of both, she would be at liberty to take appropriate action to enforce such rights. The appeal is allowed. Parties to bear their respective costs.

[1]*1999 (3) SCC 620*
[2]*1994(1) SCC 337*