

(1975) 08 DEL CK 0012
In the Delhi High Court
Case No : First Appeal No. 89 of 1973

Margaret George Chandamamnil

APPELLANT

Vs

Chandamannil Mananman George

RESPONDENT

Date of Decision : 14-08-1975

Acts Referred:

Citation : AIR 1976 Delhi 190 : (1976) 12 DLT 116 : (1976) RLR 504

Hon'ble Judges : B.C. Misra, J

Bench : Single Bench

Advocate : C.L. Joseph and A.K. Gupta, for the Appellant;

Judgement

B.C. Misra, J.

(1) This first appeal has been filed by the wife against the order of the Additional District Judge, dated 5th January, 1973, by which he dismissed the petition of the wife for grant of a decree for judicial separation.

(2) The parties are Christians who were married according to Christian rites on 29th October, 1967 and the petition giving rise to this appeal was filed on 17th July, 1971. The wife is educated and is employed as Physical Instructor in Lady Sri Ram College, Delhi on a salary of about Rs. 1100.00 per month, while the respondent husband in Tata Institute and had been getting a salary of Rs. 500.00 per month previously and on the date of evidence was getting Rs. 1150.00 besides other expenses. They have got two children ; one born on 1st August, 1968 "and the other on 20th April, 1971.

(3) The appellant wife filed the petition for judicial separation in July, 1971. The petition was subsequently amended on 9th August. 1971 and the material allegations after stating the facts relating to the marriage are that the wife and husband did not pull on well with each other and the husband became extremely cruel and the wife could not possibly tolerate his insolent, aggressive, and violent conduct and in fact both of them were living separately ; the husband at Ranchi and the wife at New Delhi, except for short durations of the vacations. She

further alleged that the husband was nasty, abusive and was in extremely threatening mood and behaved awfully in the presence of others, that the husband used to physically assault her with fists, pushes and slaps ; that the husband was very hot tempered and was in the habit of drinking and used to misbehave, abuse and assault while he was drunk, that he was never interested in living with the wife and that the cruel actions and mental torture perpetually endangered the life, limb and health of the wife, as a result of which she suffered mentally and frequently used to have nervous breakdown. She also alleged that the conduct of the husband rendered the continuance and performance of the conjugal duties impossible and she claimed a decree for judicial separation. In the written statement. the husband resisted the petition for judicial separation, but stated in paragraph 10 that he admitted that on 22nd August, 1969 and on 16th October, 1970 he did give blows to the wife and chastised her. In the additional pleas the husband elaborated the details. In the paragraph 5 thereof he stated that on 22nd August, 1969 on an unscheduled visit to Delhi he discovered a contraceptive device used by female in the wife's evening bag, which she had no necessity either to keep or much less to carry about in the hand bag she used for social outings ; the respondent questioned her sharply on this and the wife instead of making a clarification and straight answer defied the respondent husband suddenly staling "you have no business or right to check me". At this the husband gave her a stunning blow and also abused her roundly, but whatever grievance the wife had at this was condoned on resumption of affectionate relationship and co-habitation later. This paragraph shows that the husband admits having given a stunning blow and abused her roundly in the circumstances mentioned by him and he further alleged its condensation. In paragraph 10 the husband has given details of the second incident. It contains a large volume of details and after omitting what is not material for the moment, the husband has in substance stated that on 16th October, 1970 he had left the house in order to go to Dehra Dun, but on account of pain he returned to the house after about two hours and on reaching the flat he saw the three doors bolted from inside and the two windows of the bed room unusually closed and curtained ; that he took a round of the house and found that the back door of the bed room opening to the back verandah was also closed and curtained ; that having found the doors and windows closed he went towards the back door opening to the back lawn and knocked calling out the wife's name, but there was no response ; that he came to the front door and after bolting the front door rushed back to the back door and rattled it violently, but it was not opened; that he heard movements inside the house; that it occurred to him then that he had not bolted one of the front doors and whoever inside could make an escape through that door; and that he rushed to the front side of the house and there he saw to his tremendous mortification some one, unknown to him, bounding off the house to the lawn in the front and to the road. The husband then stated that he rushed into the house before the wife could bolt the door from inside and lock him out ; that there was none else except the wife in the house ; that he questioned the wife, who was not properly dressed and whose appearance was

far from normalcy, as to who her visitor was ; that she screamed and said "get out, this is my flat. Get out. You have no business to question. What is your business whom I sleep with ?" The husband thereupon was shocked and enraged and gave her few blows under extreme provocation and he left the flat almost immediately at about 10 a.m. and the wife once for all. In the midst of this happening the husband told the wife that he suspected that the second child might not be his to which the wife replied, "of course not". The husband has further stated in the written statement that the wife was guilty of adultery with the persons unknown to him. In the replication the wife reiterated her pleas contained in the petition and in paragraph 10 she reaffirmed that the husband had given her blows and beating several times. In reply to para 5, she averred that there was no condensation of cruelty and there had been no resumption of affectionate relationship and cohabitation. On the pleadings of the parties, the following issues were framed .

"(1)Whether the petitioner is entitled to judicial separation u/s 22 of the Indian Divorce Act on the grounds mentioned in the petition ? (2) Relief."

(4) The court below by the impugned judgment found that the desertion had taken place on 16th October, 1970 but the petition for judicial separation had been filed on 17th July, 1971 before the expiry of the period of two years prescribed by section 22 of the Indian Divorce Act and so the relief could not be granted on the ground of desertion. It is, however, not denied that there has not been any resumption of cohabitation of the parties since the said desertion and the counsel for the parties also state that a petition filed by the husband for divorce on the ground of adultery on the part of the wife is still pending for decision in the court below. As regards cruelty, the learned lower court was not inclined to believe the evidence of the wife mainly on the ground that she had not given details and so he rejected the story of the wife with regard to the incidents deposed to by her in July, October 1970 and January, 1971. He also rejected the ground that the husband had been making insinuations regarding her status and character since this had not been mentioned in the amended petition. With regard to the two incidents of beating on 22nd August 1969 and 16th October, 1970, which had been admitted by the husband, the learned Judge below was inclined to accept the Explanation of the husband and held that the said beating had been given for justifiable reasons and so could not constitute sufficient ground for judicial separation He further found that the same had been condoned by the wife. As a result he dismissed the petition.

(5) Mr. C.L. Joseph, learned counsel for the appellant appearing to support the appeal, has contended that the order of the court below is contrary to law and the weight of evidence on the record and the said findings be reversed.

(6) I have noticed that the husband has admitted in the written statement the two incidents of assault the wife; one is 22nd August, 1969 when he discovered a contraceptive device in the hand bag of the wife and then gave her beating. He has supported this incident by the Explanation in his evidence before the court

and has stated that he had been provoked and so gave the beating under provocation and thereafter they made up the matter. I am inclined to agree with the learned Judge to the extent that this incident of beating, although quite serious, has really been condoned by the parties since they cohabited and lived together as husband and wife for some time subsequently. This incident alone cannot constitute sufficient ground for grant of a decree for judicial separation to the wife. But that does not mean that the incident is entirely obliterated from the life of the parties. In *Dr. N.G. Dastana v. Mrs. S. Dastane*, Chandrachud J. speaking for the Supreme Court observed as follows:

"condensation of a matrimonial offence is not to be likened to a full Presidential pardon under Article 72 of the Constitution which, once granted, wipes out the guilt beyond the possibility of revival. condensation is always subject to the implied condition that the offending spouse v/ill not commit a fresh matrimonial offence, either of the same variety as the one condoned or of any other variety. "No matrimonial offence is erased by condensation. It is obscured but not obliterated". Since the condition of forgiveness is that no further matrimonial offence shall occur..... Condoned cruelty can Therefore be revived, say, by desertion or adultery."

In view of the said rule of law, I am of the opinion that the first incident is not obliterated from the record of the case and it will be given due weight in evaluating the next following incident.

(7) The second incident dated 16th October, 1970 is still more serious. The husband has detailed the circumstances in which he gave the beating to the wife. On this occasion, he admitted having given her a few blows, but under great provocation. In his evidence before the court the husband did not justify the said beating nor did he depose to the circumstances or the provocation which he had alleged in the written statement, and it appears to me that he had abandoned the case about the circumstances which he did not attempt to prove on the file. In his examination-in-chief he did not state anything about the giving of the beating to the wife on this occasion, but in cross-examination he admitted that he had read the written statement and signed it and he had given the beating to the wife on 16th October, 1970. He further admitted that on this occasion he had given two/three slaps to the wife. The beating by the husband on this occasion, Therefore, stands amply established on the record, and a justification or provocation for it, if any, has not been proved. The husband did not give any justification for the said beating in his examination-in-chief or cross-examination, but in re-examination he stated that he beat the wife thrice on the said date as he found her in an adulterous condition. This question had been objected to, as it obviously did not arise out of the cross-examination, but even taking it, at its value, the husband has not tried to establish and prove what the adulterous condition was. If he failed to prove his allegations of adultery, it only tends to aggravate the matrimonial offence as the husband falsely charged his wife with adulterous conduct which he has wholly failed to prove. So far as the wife is

concerned, she has stated in her evidence that the husband was very cruel, aggressive and hot tempered and used to abuse her in filthy language in the presence of the friends. She further stated that they were living in a flat in Pusa Road and then shifted to quarters in Lady Sri Ram College. Formerly, her mother was also living with her till 21st September, 1970 when she died. Thereafter the treatment of the husband worsened. She has deposed that the husband slapped and pushed her in the presence of Krishan Lal. She stated that the husband had given her beating several times and she had not condoned the cruelty and she was getting nervous breakdown on account of the beating and bad treatment of the husband ; that she was leading a very pure life and also commanded great respect in her college ; and that the respondent had been accusing her and making false allegations against her. The cross-examination of the wife was directed to other earlier incidents of beating which she had alleged, but she was not questioned at all with regard to adulterous condition or the suspicions of the husband about her chastity and so they remain unestablished. The wife further stated that the husband left the home on 16th October, 1970 when she was in a poor health.

(8) In my opinion, the wife in her case is certainly entitled to take advantage of the admissions made by the opposite party and obtain relief on the said basis (see *Firm Srinivas Ram Kumar v. Mahabir Prasad etc.*) On the record I find that it is established that the husband respondent gave the wife beating on two occasions. The first occasion was on 22nd August, 1969, but the same had initially been condoned. The second was on 16th October, 1970, which has not been condoned, since the husband had deserted the wife on that very day and they never cohabited thereafter. The provocation and the justification which the husband had alleged in the written statement has not been proved. The unproved alleged provocation, however aggravates the offence since the husband alleged in the written statement charges of adultery which he has failed to establish. Therefore, the conclusion is that the beating on the second occasion on 16th October, 1970 was wholly unjustified and without any provocation. I am of the view that this would constitute legal cruelty sufficient to grant the relief. Whatever the husband could urge in mitigation of the said matrimonial offence is more than counter-balanced by the fact that on the previous occasion also the husband had given to the wife, to use his own language "stunning blows and round of abuses." The previous beating would, Therefore, aggravate the matrimonial offence which has been committed on 16th October, 1970 and has not been condoned. There is no doubt that in the circumstances of the case, the statement of the wife can be easily accepted that as a result of the beating she suffered mental cruelty and injury to her health and the second incident following upon the first , incident, which the wife had forgiven would certainly afford the wife a reasonable app extension of danger to her health, body and mind. This constitutes a cruelty within the meaning of section 22. of the Act. The statement of the wife relating to the incidents between 21st July, 1969 and 1st September, 1970 has been considered by the court below, documentary evidence in the

nature of letters only throw slight on the condensation of cruelty till that date, but they do not throw any light whatsoever on the incident of 16th October, 1970, which, in my opinion, constitutes sufficient ground for grant of relief. It is, Therefore, not necessary to consider the other evidence on record, which is not material for decision of this appeal.

(9) Section 22 of the Indian Divorce Act provides that the husband or the wife may obtain a decree of judicial separation on the ground of adultery or cruelty, or desertion without reasonable excuse for two years or upwards . " Cruelty has not been defined in the Act. It was, however, authoritatively laid down by majority of the House of Lords in *Earl Russel v. Countess Russel*, Halsbury's Laws of England, 3rd Edition, Vol. 12, page 269, in paragraph 514, lays down that the legal conception of cruelty, which is not defined by statute, is generally described as conduct of such character as to have caused danger to life, limb or health (bodily or mental), or as to give rise to a reasonable apprehension of such danger. In *Tolstay*, Law and Practice of Divorce and Matrimonial Causes, 6th Edition, page 61, the learned author has relied upon the decision in *Russel v. Russel* (supra) and *Gollins v. Gollins* and stated thus :

"CRUELTY which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such a character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger."

The learned author further stated that intention is not a necessary ingredient of cruelty and neither a malevolent intention, nor a desire to injure, nor knowledge that the act doer is wrong and hurtful, need be present for conduct to amount to cruelty ; the question in all cases is whether the respondent's conduct was cruel, rather than whether the respondent was himself or herself a cruel person. It is further stated that cruelty can exist irrespective of any intention, the fact that the respondent is too stupid to realise the effect of his conduct, or his belief that the conduct is justified is no defense ; similarly, insanity is no defense unless the conduct is of a kind which only amounts to cruelty if there is present an intention to hurt and such intention is absent by reason of insanity. With regard to unjustifiable conduct, the learned author states that there are no limits to the kind of conduct, which might constitute cruelty, but whatever be the conduct it must be grave and weighty and which can properly be described as cruelty in the ordinary sense of the term. Giving examples of cruelty, the author has stated the husband deceiving his wife as to his antecedents, refusal to cooperate over family matters, taciturnity, personal uncleanliness, nagging, moods of silliness during which the husband ignored the wife, unreasonable demands of sick wife preventing the husband from sleeping, willful neglect to maintain the wife and the children are examples of conduct which can constitute cruelty. It is also stated that one act of violence, if sufficiently grave in itself, or one which, when judged in the light of the previous history of the marriage, gives reasonable apprehension of injury, may be cruelty ; and then; can be a course of conduct

which, when looked at as a whole, is cruelty although no act by itself amounts to cruelty. This statement of law is based on the authorities of *Robins v. Robing* and *Jamieson v. Jamieson*.

(10) Mr. Gupta, counsel for the respondent has relied upon *Barker v. Barker*". In this case, the court found that the wife had been struck twice on two occasions, with reference to her association with another person and she had been slapped twice. In this state of evidence. Lord Marrman P. observed that he was not going to palliate any infliction of blows on a wife, but it was obviously very material to consider what the circumstances were in which they were inflicted. He further observed that whether there was anything which could satisfy the conscience of the court that anything which the husband did to the wife caused danger to life, limb or health, bodily or mental, or gave rise to a reasonable apprehension of such danger. He found that there was not a shred of evidence that the wife suffered in health in any way whatever and there were some injuries which speak for themselves. Taking all this into account the court reversed the decree. In *Palmer v. Palmer*, Lord Goddard, C.J. observed on page 8 that a husband might very well think, sometimes quite correctly, that if his wife had done something very wrong or stupid, a good slap might make her sensible again, but a single slap would be enough to justify the wife obtaining a decree on the ground of cruelty. The court further found that it was not a case of single slap, but of several assaults upon the wife and the man could not and did not pretend that he was to assault his wife in the way he did.

(11) The preposition of law emerging from the authorities is that it is not a question of one slap or more slaps, but whether giving of the beating in the circumstances of the case amounts to legal cruelty. The parties are educated persons and the wife is a teacher in a College and is drawing a handsome salary. She is alleging a continuous cruel treatment on the part of the husband and has a history of at least one beating being undoubtedly given to her by her husband on a previous occasion which she had forgiven. But, this would aggravate the beating given on the second occasion on 16th October, 1970 when he had admittedly given two or three slaps. No decision has been cited by Mr. Gupta entitling the husband to give slaps and indeed it would be difficult to concede such a legal right to the husband, but every act of assault and other acts or omissions on the part of the husband have to be considered in relation to the facts and circumstances of each case to determine whether or not the same constitutes legal cruelty. Mr. Joseph has strongly relied upon the observation of I.D. Dua J. in *Gurcharan Singh v. Saryam Kaur*, where his lordship observed as follows :

"BEFORE concluding I may observe that whether or not isolated acts of violence amount to cruelty normally depends on the facts and circumstances of each case and the modern tendency of the society is at least to treat with disapproval acts of violence or assault towards women. New rules of social behavior and conduct must, Therefore, be recognised by the courts in determining what would amount

to cruelty in the present case set up and I would be disinclined to dismiss lightly the so-called isolated acts of violence and assault as not amounting to cruelty, if the victims of such assault resent and take exception to them."

These observations of the learned Judge are entitled to great weight. Mr. Joseph has also cited a decision of the High Court of Travancore and Cochin in *Sossannamma Kurien v. Varghese Abraham*, on the Indian Divorce Act, and the decision of the High Court of Madhya Pradesh, in *Smt. Umri Bai v. Chittar*, on the Hindu Marriage Act. It is, however, not necessary to discuss these authorities. I have no doubt that in the circumstances of the case, the cruelty u/s 22 of the Act has been established on the part of the respondent husband towards the appellant wife and she is entitled to the relief.

(12) As a result, I allow the appeal and reversing the order of the court below, grant a decree for judicial separation. In the circumstances of the case, the parties are left to bear their respective costs.