
(1978) 10 MP CK 0011
In the Madhya Pradesh High Court
Case No : First Appeal No. 134 of 1974

Smt. A.P. Marry

APPELLANT

Vs

K.G. Raghawan

RESPONDENT

Date of Decision : 13-10-1978

Acts Referred:

Special Marriage Act, 1954 — Section 27(1)

Citation : AIR 1979 MP 40 : (1981) ILR (MP) 682 : (1979) JLJ 390 : (1979) 24 MPLJ 44 : (1979) MPLJ 44

Hon'ble Judges : C.P. Sen, J;B.C. Verma, J

Bench : Division Bench

Advocate : A.R. Ghoursey, for the Appellant; L.S. Singh, for the Respondent

Final Decision : Allowed

Judgement

C.P. Sen, J.

This is an appeal u/s 39 of the Special Marriage Act, 1954, by the wife against the judgment of the trial Court dismissing her petition for divorce on the ground of cruelty,

The appellant is a Tamilian Christian while the respondent is a Keralite Brahmin. They were married under the Special Marriage Act at Madras on 16-12-1960. Thereafter, they lived together at Bhilai till 16-11-1972 where both are employed in the Bhilai Steel Plant. They have 2 sons and 2 daughters out of their wedlock. On 16-11-1972 the appellant was assaulted by the respondent with a crowbar as a result of which she received injuries with fracture of her right leg. She was admitted in the Main Hospital at Bhilai on that day and she was discharged from there on 23-7-73. After her discharge from the hospital, the appellant is living separately. The case of the appellant is that the parents of the appellant used to come and stay with them which was not liked by the respondent. On that account, serious differences arose between them and there used to be constant quarrels. The respondent is addicted to drinking and the quarrels resulted in

unseemly scenes against the prestige of the appellant. The respondent used to assault her frequently since 1963 causing injuries to her. In 1968 the respondent brought one girl Leela, a relation of his aged about 18 years, in their house and she lived there for about six months. Both used to go out and return late in the night. The appellant objected to that and she was assaulted by the respondent. On 16-11-72, the respondent beat her with a crow-bar resulting in fracture to her leg. For all these reasons, it is not possible for the appellant to live with the respondent as his wife. She, therefore, sought divorce u/s 27(1)(d) of the Act.

The respondent resisted the petition. He denied that he objected to the stay of the parents of the appellant in their house at Bhilai nor there was any quarrel over their stay. The respondent never ill-treated the appellant nor he beat her since 1963. The respondent submitted that the girl Leela is his real sister's daughter, He brought her to Bhilai in search of employment there as his sister is a widow. He always looked to her as his daughter and there was no question of any illicit relationship. The respondent never went out with her and returned late in the night. The allegations are all false. In fact, the appellant had developed illicit relation sometime in 1971 with G. Shashi, a distant relation of the respondent, with whom she used to go out every evening. Despite the entreaties of the respondent, she refused to pay any heed. The appellant used to come late after her duty hours and she was found loitering with Sashi, During duty hours also she used to go out with him, On 11-11-72 the respondent found the appellant with Sashi together in Model Town. On 12-11-72 while the respondent was asking the children to study, the appellant got wild and hit him on his face and broke his spectacles. She then burnt his pants and shirts which were lying in the room and broke his wrist watch. On the evening of 16-11-72 as usual she was going out to meet Sashi. This was protested by the respondent and she became furious and knocked his spectacles by her fist. The respondent, who had recently recovered from illness, fell down on the ground. She then took out a knife and threatened the children that she would cut them to pieces. She hurled a bottle on the respondent. The respondent in order to protect himself took out a stick from the fence. She rushed to the terrace and fell down on the floor and received injuries. She was then shifted to Main Hospital, Bhilai. The respondent tried to meet her there but she refused to see him. The said Sashi was visiting the hospital everyday. The respondent, therefore, sent a registered letter to Sashi's father on 15-12-72 complaining about the illicit connection. Sashi was called by his father by telegram on the pretext that his mother was serious. Sashi went to his village after he had taken Rs. 1,000 from the appellant. The appellant by amendment refuted the allegations about her illicit connection with Sashi.

The appellant examined herself and G. Sashi and 3 doctors to prove her injuries, while the respondent examined himself and another witness. Besides, the respondent produced a diary and some letters. The learned Additional District Judge on appreciation of the evidence on record came to the conclusion that no case of cruelty u/s 27(1)(d) of the Act has been made out although it has been

proved that the appellant was beaten by the respondent with an iron rod on 16-11-72 and she received injuries including fracture of her right leg. But this single act of assault does not make out a case of cruelty because the words used in Clause (d) are "treated with cruelty". Treatment cannot be of a single act and it implies continuous course of conduct spread over a period. Petty quarrels between the parties with occasional chastisement do take place in most of the families and there was nothing serious. Since the parties continued to live together, those acts were condoned. Accordingly, the petition has been dismissed.

It has been found by the trial Judge that the appellant was assaulted by the respondent on 16-11-72 as a result of which she received grievous injuries. This finding is not seriously challenged by the respondent and we do not find any reason to take a different view. In fact, the respondent in his letter Ex. P-3 dated 13-12-72 addressed to the father of Sashi complained that as the appellant did not listen to him and wanted to go out, he beat her down and broke her leg. There is a reference to this letter in the written statement and this letter has been admitted by the respondent in the witness box. The appellant had examined 2 doctors to prove her injuries. Dr. R. C. Tiwari (P.W. 1) took her skigram and found fracture in the fibula bone of right leg. Dr. D. P. Rai (P.W. 2) examined the appellant on 16-11-72 and found (i) fracture of the lower end of the right fibula, (ii) haematoma upper end of the left forearm 2" X 1 1/2" anterolateral aspect, (iii) contusion right side of back upper part 4" X 1/2" and (iv) superficial lacerated wound over lower end of left forearm posterior lateral aspect. All the injuries could be caused by hard and blunt object. The fracture could possibly be caused by fall from a height like from terrace to the ground. Dr. P. N. Sengupta (P. W. 3), who is Orthopaedic Surgeon, treated the appellant from 23-12-1972 till she was discharged from the hospital on 23-7-1973. According to him, the fracture of fibula of the right leg could be caused by direct hit or violence. All the injuries were unlikely to be caused by fall from a height. The injuries could be possibly from a blow with an iron rod. The learned Addl. District Judge has rightly preferred the statement of Dr. Sengupta to that of Dr. Rai, Dr. Sengupta being an Orthopaedic Surgeon and having treated the appellant all through, he was in a better position to opine about the injuries. Dr. Rai only gave a general statement that the fracture could be caused by fall from a height, but here it is nobody's case that the appellant fell down from the terrace. It is, therefore, proved conclusively that the appellant was beaten mercilessly by the respondent as a result of which she received grievous injuries and she was confined in the hospital for about 8 months.

The only question for consideration is whether the appellant is entitled to a decree of divorce on the ground of cruelty u/s 27(1)(d) of the Act because of the single act of violence on 16-11-72.

It appears that the parties were living quite happily at Bhilai and they have 4 children out of their wedlock. May be there have been some minor differences between the parties but those were never taken seriously and could be taken to

have been condoned. In evidence, the appellant has tried to introduce that the respondent had developed illicit relationship with one maidservant Sarojini, but there is no pleading to this effect and this evidence has been ignored by the trial Judge. She had pleaded and tried to prove that the respondent had brought one girl Leela, a relation of his, to Bhilai and affairs with her were going on. This part of her story cannot be accepted since Leela happened to be the real sister's daughter of the respondent. This fact has been admitted by the appellant. The story has been introduced only to make out a case for divorce and rightly not believed by the trial Judge. It appears that nothing serious happened nor their relations were in any way strained prior to 1971 when the appellant came in contact with G. Sashi, who is a distant relation of the respondent and was posted at Bhilai at that time. He developed intimacies with the appellant as he stayed in their house for sometime. When the respondent learnt about this relationship, he resented and asked Sashi to leave the house. But thereafter also the appellant has been meeting Sashi during the office hours and also in the evening. She has admitted that she used to go out for shopping with Sashi though according to her with the permission of the respondent. One diary Ex. P-4 was maintained by the appellant and according to the respondent this diary was regarding the love affairs of the appellant. The appellant tried to wriggle out of this diary when it was confronted to her by saying that she had written a story for publication in some journal. She also alleged that there has been tampering with the writings in this diary. The diary is written in Tamil and it is not possible to ascertain the contents when full translation has not been filed. It appears to be narration by a lady of her love affairs with a third person. However, there is clinching evidence on record to show that the appellant had developed intimacies with Sashi. This is evident from the 2 letters written by G. Sashi EXS. D-2 & D-3. While G. Sashi (P.W. 4) admitted that he wrote letter Ex. D-2 to the respondent he denied that he wrote letter Ex. D-3 to the appellant. He had even cheek to say that Ex. D-3 is not in his handwriting. A bare look these 2 letters show that they are written by the same person. In this letter Sashi has written that he cannot forget their first night of 13th September. Then he proceeded to write about his love towards her. He then wrote that he wants to possess her for ever and he always sees her in his dreams. This love affair is further proved from the letter Ex. P-3 written by the respondent immediately after the incident of 16-11-72. This- letter has been produced by the appellant as she got it from Sashi. Therefore, it has to be held that it was the appellant who was leading an adulterous life with Sashi and this was resented by the respondent. He tolerated the matter for over a year but he could bear it no longer and he lost his self control and assaulted the appellant on provocation with an iron rod on 16-11-72 causing her serious injuries. It has to be remembered that the parties are educated persons and the respondent had no justification for causing grievous injuries to the appellant. If the respondent could no longer tolerate the behaviour and conduct of the appellant, he should have sought his remedy by recourse to law and not by assaulting the appellant in the presence of so many persons and causing her grievous injuries.

Rayden on Divorce, 12th Edition at page 1133 in Note 10 has opined that the proper test of and approach to cruelty is was the conduct of such a grave and weighty nature as to make cohabitation virtually impossible? The conduct complained of must be serious. It must be much higher than the ordinary wear and tear of married life. It is the effect of conduct rather than its nature which is of paramount importance in assessing a charge of cruelty. To obtain a matrimonial order on the ground of cruelty it must be proved that one partner in the marriage, however mindless of the consequences, has behaved in a way which the other spouse could not in the circumstances be called upon to endure". In note 15 he further opined regarding physical violence as under:--

"Although one act may have been so grievous as by itself to have constituted cruelty for the purposes of obtaining a decree of divorce or judicial separation, this was seldom the case and one act in itself is not sufficient to establish persistent cruelty in the magistrates' court. But it may be that a single act of physical violence causing severe injury is in itself so serious a matter as to justify a finding of cruelty. It has been held that a blow followed by minor acts is enough. Where there is violence between the parties the Court will not stop to inquire whether there is a general injury to health, nor is it an excuse for violence that it was inflicted because of mental illness."

In para 1269 of Vol. 13 of Halsbury's Laws of England, 4th Edition, it has been observed that the general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that rule is of special value when the cruelty consists not of violent acts but of injurious reproches, complaints, accusations or taunts. Several cases have been noted in Rayden but we are herewith mentioning only 2 cases i.e. *Barker v. Barker* (1949) 1 All ER 247 wherein it has been held that it is possible to pronounce a decree of divorce on a single act of cruelty if that act comes within the well-known definition of cruelty contained in *Russell v. Russell*, (1897) AC 395. In *Robins v. Robins*, (1960) 3 All ER 66 it has been held that the assault gave rise to a reasonable apprehension of injury in the future, having regard to the mental state of the husband, and was good ground for a finding of cruelty; therefore the wife was entitled to a decree nisi.

Recently, the Supreme Court in *Dr. N.G. Dastane Vs. Mrs. S. Dastane*, had occasion to consider a case of cruelty u/s 10(1)(b) of the Hindu Marriage Act, 1955. The Supreme Court held as under (at p. 1541):--

"The inquiry therefore 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. It is not necessary, as under the English law, that the cruelty must be of such a character as to cause "danger" to life, limb or health or as to give rise to a reasonable apprehension of such a danger. Clearly, danger to life, limb or health or a reasonable apprehension of it is a higher requirement than a reasonable apprehension that it is harmful or injurious for one spouse to live with

the other.

The question whether the misconduct complained of constitutes cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the acts. The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse."

Of course, the Supreme Court was interpreting Section 10(1)(b) of the Hindu Marriage Act which is as under:--

"has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party."

while Section 27(1)(d) of the Special Marriage Act is as under:--

"has since the solemnization of the marriage treated the petitioner with cruelty."

Now the provision in Hindu Marriage Act has been amended by the Marriage Laws Amendment Act, 1976, and Section 10 has been deleted and new section introduced. As per amended Section 13, divorce can be obtained on the ground of cruelty also and Clause (1) (i) (a) is as under:--

"has after the solemnization of the marriage treated the petitioner with cruelty."

Therefore, the requirement of cruelty under both these Acts is now similar. Mulla on Hindu Law, 14th Edition at page 715 has opined that the legal conception of cruelty and the kind or degree of cruelty necessary to amount to a matrimonial offence has not previously been defined by any statute of the Indian Legislature relating to marriage and divorce, nor has the expression been defined in the Matrimonial Causes Act, 1950, or any earlier enactment in England. The danger of any attempt at giving a comprehensive definition which may cover all cases has been emphasized in a number of decisions. At page 717 he has further opined that even a single act of violence may be of such a grievous and inexcusable nature as by itself to satisfy the test of cruelty. A single Bench of the Punjab High Court in Gurcharan Singh v. Smt. Waryam Kaur, AIR 1960 P&h 422 has held as under (at p. 425):--

"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 behaviour and conduct must, therefore, be recognised by the Courts in determining what would amount to cruelty in the present set-up, and the court 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 assaults resent and take exception to them."

We are, therefore, inclined to differ with the view of the trial Judge and hold that a single act of violence may come under the mischief of Section 27(1)(d) within

the meaning of the words "has treated with cruelty" provided the violence is of a grievous and inexcusable nature. In the present case, the respondent assaulted the appellant with an iron rod and caused her 4 injuries, one of which was grievous in nature resulted in fracture of right fibula, in presence of their children and others. Because of these injuries, the appellant was confined in the hospital for about 8 months. The parties are educated persons and as has been observed in the Punjab case due to new rules of social behaviour and conduct this act of violence could not be excused or tolerated, by any spouse. The appellant has alleged that after the assault the respondent did not care to attend on her in the hospital though it has been tried to be explained by the respondent that he was prevented from going there by the hospital staff on the instructions of the appellant. The respondent also admits that after the incident the parents of the appellant had come and stayed in his house but he turned them out after a few days. This subsequent conduct further aggravates the matter. Since the time of the assault, the parties have separated and they are living separately. The respondent has behaved in such a cruel manner which the appellant could not endure and forget. It appears that no reconciliation is feasible and it is no longer possible for the parties to live together as husband and wife in spite of the fact that they have got 4 children through their wedlock. We, therefore, see no reason why the petition should, not be allowed and a decree for divorce be granted in her favour.

The appeal is allowed and the judgment and decree of the trial Court are set aside. In the circumstances of the case, there shall be no order as to costs.