

Delhi High Court Smt. Linda Constance Edwards vs Shri William Edwards & Anr. on 4 December, 2000 Equivalent citations: 2001 IIIAD Delhi 482, 91 (2001) DLT 355, 1 (2001) DMC 746, 2001 (58) DRJ 731 Author: J Kapoor Bench: J Kapoor ORDER J.D. Kapoor, J. 1. Marriage between the parties who are Christians took place more than 25 years ago. Its dissolution has been sought on the ground of cruelty coupled with adultery. 2. It is alleged that right from day one respondent No.1, i.e. the husband started exhibiting symptoms of cruelty, apathy and lack of interest towards the petitioner and somehow or other the petitioner pulled on with the marriage till the year 1978 in the hope that the respondent No.1 may change. The impression of the petitioner was that the problems of his character may be due to temperament and not a basic trait of his character that may be incorrigible or unchangeable. That off and on the respondent No.1 used to come home fully drunk and indulged in physical beatings. However, when all efforts failed, the petitioner found that respondent No.1 was psychologically ill and has maniac traits right from his childhood and his character is unsuitable for a marital life and so much so the doctors, psychologists and priests have advised him not to entry into a marital life but the respondent No.1 played a fraud upon the petitioner and obtained her consent. In spite of the fact that two children were born to the petitioner during the three years of their joint stay the respondent No.1 developed hatred towards her and stopped having intercourse with her and rather spurned and rejected the advances and offers sometimes fiercely and sometimes in most hateful manner from 1978 to 1980. It is further alleged that during 1978-1980 respondent No.1 used to beat the petitioner almost daily and also used to remain absent from home continuously for 2-3 days without any reason or intimation. 3. On making inquires through friends and relatives the petitioner came to know that respondent No.1 was having illicit relationship with woman of bad character named Ms. Sonia residing in Paharganj area. When she objected to respondent No.1's conduct and absenteeism and cruel behavior towards the petitioner and his adulterous affairs he became violent and threw the petitioner and children out of matrimonial home. However, the repeated entreaties did not find favor and he refused to accept the petitioner and children back to matrimonial home. Being compelled by the circumstances she undertook a job for her survival as also for survival of the children. 4. Now for the last five years the respondent No.1 has been living with another woman Ms.Rubi Mehra, respondent No.2, and when petitioner requested him to leave respondent no. 2 and accept petitioner and children back he did not pay any heed and when she approached his mother, she also expressed her inability by saying that he was no more under her control. 5. Last attempt to reconcile and mend respondent No.1 was made by the petitioner on 28.9.1997. At about 2.30 afternoon she went to the house where respondent No.1 has been living with aforesaid Ms.Rubi Mehra and finding no response from the doorbell and knock at the door she tried to open the door and moment she pushed it, it got opened since no latch was put inside. When she went inside and did not find anybody in the drawing room, she proceeded to the bedroom and knocked at the door. The respondent No.1 removed the latch and half-opened the door but when she pushed it, respondent

No.1 lost the control of his hold and the door got opened. She saw respondent No.2 lying in the bed stark naked. She pulled the bed sheet and covered herself. The only inference was that both of them were having sexual intercourse at that time. Respondent No.1 became very angry and hurt the petitioner on her face and pushed her out of the room and abused her by calling her a bitch and also threatened to kill her in case she again tried to enter the house. Thus, the respondent no.1 has not only committed physical and mental cruelty upon the petitioner but has also been committing adultery since long apart from deserting her and her children. 6. In spite of having been served with the notice of the petition, none of the respondents came forward to contest it. The petitioner filed the affidavit by way of evidence in support of aforesaid allegations. 7. As is apparent, there are allegations of physical beating, remaining absent for days from the matrimonial home without information or intimation and having adulterous affairs with two women and lastly having been found in suspicious and questionable circumstances with respondent no.2 in the bed room and the long desertion of the petitioner and the children and failure of all efforts on the part of the petitioner to bring back the respondent no.1 on the path of virtue or attend the husbandly duties. 8. It is no more valid to say the cruelty occurs only when there is bodily harm or infliction of physical blows endangering life, limb or health. The concept of cruelty in marital relations has widened its net and brought the mental cruelty into its fold. Since element of happiness in marriage has gained currency, the definition of cruelty cannot be put in strait-jacket manner. Marital cruelty which includes mental cruelty also has been enunciated by the Supreme Court in , V. Bhagat vs. Mrs. D.Bhagat. as under :- “Mental cruelty in S.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.” 9. Thus it is not always essential that a course of conduct should aim at causing mental pain and suffering in order to constitute the cruelty. It is the effect produced by the course of conduct and acts of a spouse and not the motive that is relevant. It has been rightly said that sometimes words inflict a more painful blow and cause psychological sufferings and emotional distress than physical cruelty, though occasional bickerings or pinpricks are part of normal marital life as human fragility generates such skirmishes. 10. Whether refusal to have sexual intercourse amounts to cruelty or not depends upon the facts and circumstances of each case. Sexual intercourse is just one of marital rights. No doubt, the denial of sexual relations causes frustration and misery to the aggrieved party and is likely to destroy the fibre of marriage yet reasonable denial on the part of either party does not constitute cruelty. This aspect of marital obligation has been dealt with in most elaborate manner in Jacobson vs. Jacobson, 130 Ny.S.II D 762. It is observed that this obligation is of a personal and delicate nature and depends on sentiments and feelings to

such an extent that it would be an intrusion into the privacy of domestic life to stipulate reasonable denial on the part of either party to submit to marital intercourse constitutes cruelty. Such denial does not constitute cruelty even though refusal to have marital sexual relations undermines the essential structure of a marriage. 11. It is further observed that, if refusal is occasional, or for a short period, it is against public policy to treat it as cruelty. However, complete failure to have sexual intercourse for a prolonged period or its total or irrevocable negation despite advances and requests does constitute cruelty as in the absence of an adequate excuse such refusal strikes at the basic obligations springing from marriage undermining its essential structure. 12. For instance a denial on the ground of ill health or say after child birth or for some such reasons including excessive or obsessive sexual demands of a spouse may fall in the category of reasonable denial. 13. Here for several years the petitioner has been denied the sexual relations despite her advances and requests even during the period both were living under the same roof. Such denial is total negation of one of the most important marital obligations and amounts to cruelty. 14. Though the statutory provisions of Section 10 of the Indian Divorce Act all for proof of adultery also if the divorce is sought on the ground of cruelty but in view of the view taken by the Special Bench of Kerala High Court in , Ammini E.J. and etc. v. Union of India and others and the Full Bench of Maharashtra in , Mrs. Pragati Varghese and etc. vs. Cyril George Varghese and etc., it is no more necessary for a party seeking divorce on the ground of cruelty to prove adultery. 15. In Ammini's case (supra) the provisions of Section 10 were held to be violative of Article 21 as well as 14 of the Constitution of India as they compel a deserted or cruelly treated Christian wife to live perpetually tied down to a marriage which has for all intents and purposes ceased to exist as a result of desertion and cruelty shown by the husband concerned are highly harsh and oppressive and as such arbitrary and violative of Article 14 of the Constitution of India. Christian spouses alone are not entitled to get dissolution of their marriage on the ground of cruelty and desertion even if perpetrated continuously for any length of time. They are entitled to get only a decree for judicial separation under Section 22 of the Act. Spouses belonging to all other religions governed by the other religions Acts are entitled to get dissolution of their marriage on the ground of cruelty and desertion for the period fixed by the respective Acts. The provisions of Section 10 are held to be discriminatory vis-a-vis Christians spouses merely on the basis of religion. 16. In Pragati's case (supra) the Bombay High Court also held the provisions of Section 10 as violative of Article 14, 15 and 21 of the Constitution of India for the following reasons: "The different treatment which is accorded to Christian woman under S.10 of the Act is based merely on grounds of sex. Similarly, if one compares the provisions of the other enactments on the subject of divorce, it would be clear that Christian wives are discriminated and have been treated differently as compared to wives who are governed by the other enactments. The discrimination is, therefore, based merely on grounds of religion. The aforesaid discrimination, in the circumstances, is violative both, of Art. 14 and of Art. 15 of the Constitution. Similarly, if one has regard to the dealing with protection of life and personal liberty, it would be clear that the

position of Christian women, has been rendered most demeaning as compared to Christian husbands, as also wives governed by other enactments. The provisions contained in S.10 in the circumstances, are violative of Art.21 also.” 17. This being the position of law the petitioner is even otherwise entitled to decree of divorce on the ground of cruelty though she has also proved successfully the ground of adultery. 18. According to divorce laws, adultery is voluntary sexual intercourse of a married person with a person other than the offender’s wife or husband. Rayden defines it as “Consensual sexual intercourse between a married person and a person of the opposite sex not the other spouse, during the subsistence of marriage. It is no more necessary that a person should continue living in adultery. Single act of intercourse constitutes adultery. 19. Here when the petitioner wife came to know that the respondent No.1 has started living with respondent No.2 at premises C-125, Dayanand Colony, Lajpat Nagar, New Delhi - 110024, she visited the premises and found the door closed. There was no response to the doorbell as well as the knock. She pushed open the door that led her to the drawing room. There was nobody. Feeling suspicious she knocked at the door of the bed room. The moment it was in the process of being opened, the petitioner pushed it open forcefully and found respondent No.2 lying stark naked in the bed. On seeing her, she pulled the bed sheet to cover her up. 20. It is said that the adultery is committed in darkness and secrecy and, therefore, it is difficult to provide a direct proof. Rather eyewitness account or photographic account of evidence of intercourse is taken as offending. A celebrated jurist Raydon in Raydon on Divorce observes that a direct evidence is rather apt to be disbelieved as it smacks of manipulation. It is rare that the parties are surprised in direct act of adultery. In the opinion of Sir William Scott in *Lovedon vs. Lovedon*, 2 Hagg Con, 1810, (Australian Family Law, p.455), “the only general rule that can be laid down upon the subject is that the circumstances must be such as would lead the guarded discretion of a reasonable and just man to the conclusion, for it is not to lead a harsh and intemperate judgment, moving upon appearances that are equally capable of two interpretations, neither is it to be a matter of artificial reasoning, judging upon such things differently from what would strike the careful and cautious consideration of a discreet man“. 21. Thus the adultery is to be inferred from circumstances which must indicate inclination, guilty intention and opportunity to commit adultery. Bed room evidence is one of such strong circumstances as way back in 1909 in *Kerr v. Kerr*, 114 App. Div. 1421, it was observed that where man and a woman who are not husband and wife have bed room privacy, there is strong inference of adultery as they do not sing prayers there. 21. In the instant case sufficient bed room evidence has been furnished by the petitioner culminating in proof of adultery. 22. Taking over-all view and the long course of cruel conduct coupled not only with adulterous dispositions but actual indulgence in adultery, I feel persuaded to allow the petition and grant decree for dissolution of marriage. Accordingly the marriage is dissolved. A decree sheet be prepared.