

Shobha Rani vs Madhukar Reddi on 12 November, 1987

Equivalent citations: 1988 AIR 121, 1988 SCR (1)1010, AIR 1988 SUPREME COURT 121, 1988 (1) SCC 105, 1988 BLJR 138, (1988) BLJ 182, (1988) 1 CIVLJ 284, (1988) MAHLR 553, 1988 CRILR(SC MAH GUJ) 88, (1987) ALLCRIC 564, (1988) 1 DMC 12, (1988) SC CR R 413, (1988) 1 APLJ 1, (1987) 2 LS 64, (1988) 1 ALL WC 250, (1988) 1 CURCC 209, (1988) EASTCRIC 194, (1988) 1 HINDULR 169, (1988) 1 SCJ 307, 1988 SCC (CRI) 60, (1987) 4 JT 433 (SC)

Author: K.J. Shetty

Bench: K.J. Shetty, B.C. Ray

PETITIONER:

SHOBHA RANI

Vs.

RESPONDENT:

MADHUKAR REDDI

DATE OF JUDGMENT 12/11/1987

BENCH:

SHETTY, K.J. (J)

BENCH:

SHETTY, K.J. (J)

RAY, B.C. (J)

CITATION:

1988 AIR 121 1988 SCR (1)1010

1988 SCC (1) 105 JT 1987 (4) 433

1987 SCALE (2)1008

ACT:

Hindu Marriage Act, 1955: Section 13(1)(i-a)-`Cruelty'-Demand for dowry-Whether cruelty-Whether wife entitled to decree for dissolution of marriage-`Intention'-Whether necessary to constitute and prove cruelty in matrimonial cases.

Dowry Prohibition Act, 1961 : `Dowry'-Demand of-Whether amounts to cruelty entitling wife to decree for dissolution of marriage.

Indian Penal Code, 1860: Section 498A-`Cruelty'-What is-Demand for dowry-Whether amounts to cruelty-Whether wife entitled to decree for dissolution of marriage.

HEADNOTE:

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The appellant-wife, a post-graduate in biological sciences, married the respondent-husband, a medical doctor on December 19, 1982. Soon after, relations between them became bitter. Ultimately, the appellant-wife moved the court for divorce on the ground of cruelty. Her main complaint was about the dowry demanded by the husband or his parents.

The trial court rejected the appellant's case on the ground that there was no satisfactory evidence that the demands were such as to border on harassment.

The High Court also rejected her case and held that the appellant appeared to be hypersensitive and imagined too much and too unnatural things, that the demand for money had to be viewed from a proper angle, and that there was nothing wrong in the respondent, who was a doctor, asking his rich wife to spare some money.

Allowing the appeal by special leave,

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HELD: 1.1 In order to curb the evil practice of dowry, the Parliament enacted the Dowry Prohibition Act, 1961 prohibiting the giving or taking of dowry. But, as the pernicious practice continued in some communities, the Dowry Prohibition (Amendment) Act, 1984 was enacted.

1011
ted with considerable changes in the parent Act. Likewise, the Indian Penal Code, 1860 was amended by introducing an entirely new offence with regard to criminal jurisdiction. Section 498A was introduced providing for punishment to the husband or the relative of the husband of a woman, subjecting her to cruelty. [1015F-H]

new dimension has been given to the concept of cruelty. Explanation to s. 498A of the Indian Penal Code provides that any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide or likely to cause grave injury or danger to life, limb or health (whether mental or physical of the woman), and harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security would constitute cruelty. [1016E-F]

1.2 Cruelty simpliciter is a ground for divorce under section 13 of the Hindu Marriage Act. However, the word 'cruelty' has not been defined. Indeed, it could not have been defined. It has been used 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 enquiry must begin as to the

nature of cruel treatment and 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. There may, however, be cases 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. [1013E-H; 1014A]

1.3 The matrimonial conduct which constitutes cruelty as a ground for dissolution of marriage, if not admitted, requires to be proved on the preponderance of probabilities as in civil cases and not beyond a reasonable doubt as in criminal cases. [1016G]

1.4 Evidence as to harassment to the wife to meet any unlawful demand for money is necessary to constitute cruelty in criminal law. This is the requirement of the offence of cruelty defined under s. 498A of the Indian Penal Code. It is not so under s. 13(1)(i-a) of the Hindu
1012

Marriage Act, 1955. The cruelty need not be only intentional, wilful or deliberate. It is not necessary to prove the intention in matrimonial offence. From the context and the set up in which the words 'cruelty' has been used in s. 13(1)(i-a), intention is not a necessary element in cruelty. That word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. The relief to the party cannot be denied on the ground that there has been deliberate or wilful ill-treatment. [1020F-H; 1021A-C]

1.5 The matrimonial duties and responsibilities 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. In matrimonial cases, the Court is not concerned with the ideals in family life. It has only to understand the spouses concerned as nature made them, and consider their particular grievance. [1014B,F]

Sheldon v. Sheldon, [1966] 2 ALL E.R. 257, 259, Gollins v. Gollins, [1963] 2 All E.R. 966 1972 and Narayan Ganesh Dastane v. Sucheta Narayan Dastane, [1975] 3 SCR 967 1978, referred to.

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3013 of 1987.

From the Judgment and Order dated 30.7.1986 of the Andhra Pradesh High Court in A.A.O. No. 1491 of 1985.

S. Madhusudan Rao, K.K. Gupta and Rakesh Kumar Gupta for the Appellant.

K.V. Sreekumar and B. Parthasarathi for the Respondent. The Judgment of the Court was delivered by JAGANNATHA SHETTY, J. We grant special leave and proceed to dispose of the appeal.

Shobha Rani is the appellant. Her husband is Madhukar Reddi who is respondent before us. The wife is post-graduate in biological sciences. The husband is a medical doctor. They were happily married on December 19, 1982. But their happiness did not last longer. They started exchanging letters with bitter feelings. Then they began to accuse each other. At one stage, they thought of winding up by mutual consent. It was perhaps out of disgust. it would have been better, if it had happened. But unfortunately, it did not materialise. Ultimately they landed themselves in the Court. The wife moved the Court for divorce on the ground of cruelty.

Before referring to further facts, let us consider the law. The cruelty simpliciter is now a ground for divorce under Sec. 13 of the Hindu Marriage Act (Act 25 of 1955). Section 13 provides, so far as it is material:

"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

(i)

(i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty, or xxxx xxxxx xxxxx xxxxx 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 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. 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.

It will be necessary to bear in mind that there has been marked change in the life around us. In 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 E.R. 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/realm of cruelty.

These preliminary 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*, [1963] 2 All. E.R. 966 (1972):

"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."

Chandrachud, J. (as he then was) in *Narayan Ganesh Dastane v. Sucheta Narayan Dastane*, [1975] 3 SCR 967 (978) said:

"The Court has to deal, not with an ideal husband and an ideal wife (assuming any such exist) but with parti-

cular 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."

With these principles in mind, we may now unfold the story with which the wife came to the Court seeking dissolution of her marriage. She made several grievances. We may ignore all but one. The one and the only one with which we are concerned is her complaint about the dowry demand by the husband or his parents. The dowry is a deep rooted evil in the society. It started as customary presents with love and affection. In olden days, it was customary to give some presents to the bride and bridegroom and his family at the time of marriage. The parents of the bride or their relations out of affection and good intention used to provide the couple something to fall back upon in case of need. The system started at a time when girls were generally not very much educated and even if

they were educated they were unwilling to take up gainful employment. There was also less opportunity for them either to supplement the family income or to become financially independent. There was yet another reason for such customary gifts. The daughter then was not entitled to a share in the joint family properties when she had a brother. Hence the father out of affection or other consideration used to give some cash or kind to the daughter at the time of marriage. The right of the father to give a small portion of even the family property as a gift to the daughter at the time of her marriage was recognised. But unfortunately over the years new practice developed. The boy or his family members started demanding cash or kind from the brides parents. They started demanding dowry as a matter of right. The demand more often extended even after the marriage. There were instance of harassment of the wife, if the demand was not complied with. In order to curb this evil practice, the Parliament enacted the Dowry Prohibition Act, 1961 (Act No. 28 of 1961). The Act prohibited the giving or taking of dowry. But in spite of this enactment, the pernicious practice continued in some communities. The Joint Committee of Parliament appointed to examine the working of the Dowry Prohibition Act remarked "the evil sought to be done away with by the Act, on the other hand, increased by leaps and bounds and has now assumed grotesque and alarming proportions." Again the Parliament intervened. The Dowry Prohibition (Amendment) Act, 1984 was enacted with considerable changes in the parent Act. Likewise the Indian Penal Code was amended by introducing of an entirely new offence hitherto unknown to criminal jurisprudence. Sec-

tion 498 A has been introduced in the following terms:

"498 A. Husband or relative of husband of a woman subjecting her to cruelty; whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation-For the purposes of this section "cruelty" means:

(a) Any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

A new dimension has been given to the concept of cruelty. Explanation to Sec. 498 A provides that any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide would constitute cruelty. Such wilful conduct which is likely to cause grave injury or danger to life, limb or health (whether mental or physical of the woman) would also amount to cruelty. Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security would also constitute cruelty.

We are, however, not concerned with criminal offence either under the Dowry Prohibition Act or under the Indian Penal Code. We are concerned with a matrimonial conduct which constitutes cruelty as a ground for dissolution of marriage. Such cruelty if not admitted requires to be proved on the preponderance of probabilities as in civil cases and not beyond a reasonable doubt as in criminal cases. This Court has not accepted the test of proof beyond a reasonable doubt. As said by Chandrachud, J. in Dastane case (Ibid at p. 976):

"Neither section 10 of the Act which enumerates the grounds on which a petition for judicial separation may be presented nor section 23 which governs the jurisdiction of the Court to pass a decree in any proceedings under the Act requires that the petitioner must prove his case beyond a reasonable doubt. Section 23 confers on the court the power to pass a decree if it is "satisfied" on matters mentioned in clauses (a) to (e) of the section. Considering that proceedings under the Act are essentially of a civil nature, the word "satisfied" must mean "satisfied" on a preponderance of "probabilities" and not "satisfied beyond a reasonable doubt". Section 23 does not alter the standard of proof in civil cases."

Let us now turn to the evidence in this case. It consists of that of wife as P.W. 1 as against the evidence of husband as R.W. 1. The parties have also produced the letters exchanged between them. There appears to be no doubt that the husband or his parents were demanding dowry from the appellant. The husband in his letter Ex. A1 dated August 28, 1983 wrote to the wife:

"Now regarding Dowry point, I still feel that there is nothing wrong in my parents asking for few thousand rupees. It is quite a common thing for which my parents are being blamed, as harassment."

The wife in her evidence before the Court has stated:

"My Mother-in-law always used to make demand for money from my parents. I used to tell my parents about what was happening to me in that house. I used to keep silent when my mother-in-law made demands for money. The respondent also sometimes used to make demands for money. I used to tell him as to why should I ask money from my parents, and I also used to tell him that I would not ask my parents. But he used to reply that such things were only there in olden times and not now and that therefore, I should ask money from my parents. There were fixed deposits receipts in my name in the Bank upto one and a half to two lakhs. Besides this there was house plot in my name at Jubilee Hills. I was afraid of telling my husband and my parents in law that I would not ask my parents for money.

This I was afraid because I had an apprehension that something would be done to me either physically or mentally if I told them so. I entertained this apprehension because this went on regularly every day, that is their demands for money.

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I was afraid to go back again to the respondent's house because I felt that the pestering for money will go on like this. I, therefore, developed aversion for going back to the respondent. For that reason, I joined as a school teacher."

The trial court or the High Court did not state that there was no demand for money. The case of the wife was, however, rejected on the ground that there was no satisfactory evidence that the demands were such as to border on harassment. The trial court said:

"Though one would not justify demands for money, it has to be viewed in this perspective. The respondent is a young up coming doctor. There is nothing strange in his asking his wife to give him money when he is in need of it. There is no satisfactory evidence that the demands were such as to border on harassment."

In regard to the admission by the husband in his letter dated August 28, 1983 as to the dowry demanded by his parents, the trial court observed:

"The letter should be read as a whole. The respondent has an explanation to make and has made one in the cross-examination. He is trying to confess. It is clear from the attitude of the petitioner that she is prone to exaggerate things. That is evident from her complaint of food and the habit of drinking."

xxxxxx xxxxxx xxxxxx "Either because of her over sensitivity or because of her habit of exaggeration, she has made a mountain of mole-hill. Further, for the reasons best known to her, the petitioner has not examined her father. There is no explanation why he has not been examined in support of her contention that the respondent and his parents were harassing her for money."

The High Court also went on the same lines. The High Court said that the wife appears to be hypersensitive and she imagines too much and too unnatural things. The High Court then observed:

"Though one would not justify demands for money it has to be viewed in the circumstances from a proper angle. The respondent is a doctor, if he asks his rich wife to spare some money, there is nothing wrong or unusual."

This is not a case where the husband requested his wife to give some money for his personal expenses. The High Court appears to have misunderstood the case. It has evidently proceeded on a wrong basis. It proceeded on the ground that the husband wanted some money from his wife for his personal expenses. If the demand was only of such nature we would have thrown this appeal away. The wife must extend all help to husband and so too the husband to wife. They are partners in life. They must equally share happiness and sorrow. They must help each other. One cannot take pleasure at the cost of the other. But the case on hand is not of a failure on that front. It has been admitted by the husband himself in his letter dated August 28, 1983 addressed to the wife that his parents demanded dowry. But he wrote to the wife that there was nothing wrong in that demand of his parents. This is indeed curious. He would not have stated so unless he was party to the demand.

The wife has stated in her evidence that there were repeated demands for money from her mother-in-law. Her evidence cannot be brushed aside on the ground that she has not examined her father. It was not the case of the wife that the dowry was demanded directly from her father. The evidence of the father was therefore not material. It is also not proper to discredit the wife as hypersensitive or prone to exaggeration. That would be judging the wife by our style of manners and our standard of life. That we cannot apply. We must try to understand her feelings and then search for the nugget of truth in the entire evidence.

The contents of Ex. A1 should not be read in isolation. It must be viewed against the background of accusations in the letter dated December 26, 1983 written by advocate for the wife to his counter-part. The relevant portion of the letter reads:

"In the background of these, the worst form of ill treatment that is meted out to our client was constant harassment for monies. It may be brought to your notice that prior to marriage on demand by your client's father a sum of Rs. 17,000 was given and also a Scooter thereafter. It may be brought to your notice that one other main reason for your client to dowry deaths which are very frequently seen now-a-days in papers. It may be pointed out that your client's philosophy is that since our client's are financially sound, there is no wrong for your client's parent to ask for few more thousands. It may be pointed out and brought to your notice that it appears your client's sole object of marriage was to get the monies standing in the name of our client transferred to his name. It would be better to understand that money that stand in our client's name are somewhere about two lakhs. It is not out of place to mention that your client's behaviour and treatment with our client could only be said to be a pointer for seeking these monies alone and marriage was a device....."

The cumulative effect of all the circumstances and the evidence of parties lead to the conclusion that the demand of dowry went on with the support of the husband. The High Court while dealing with this part of the case has observed that there is no evidence to show that the demands were such as to cause harassment to the wife. The High Court appears to have misconstrued the scope of cruelty in matrimonial affairs. The evidence as to harassment to the wife to meet any unlawful demand for money is necessary to constitute cruelty in criminal law. It is the requirement of the offence of 'cruelty' defined under sec. 498A of the Indian Penal Code. Sec. 13(1)(i-a) of the Hindu Marriage Act provides that the party has after solemnization of the marriage treated the petitioner with cruelty. What do these words mean? What should be the nature of cruelty? Should it be only intentional, wilful or deliberate? Is it necessary to prove the intention in matrimonial offence? We think not. We have earlier said that cruelty may be of any kind and any variety. It may be different in different cases. It is in relation to the conduct of parties to a marriage. That conduct which is complained of as cruelty by one spouse may not be so for the other spouse. There may be instance of cruelty by the unintentional but inexcusable conduct of any party. The cruel treatment may also result by the cultural conflict of the spouses. In such cases, even if the act of cruelty is established, the intention to commit cannot be established. The aggrieved party may not get relief. We do not think that that was the intention with which the Parliament enacted sec. 13(1)(i-a) of the Hindu Marriage Act. The context and the set up in which the word 'cruelty' has been used in the section,

seems to us, that intention is not a necessary element in cruelty. That word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment. The same is also the line of reasoning adopted by the House of Lords in *Gollins v. Gollins*, [1963] 2 All E.R. 966 at 976 where Lord Evershed said:

"I am unable to accept the premise that "cruelty" in matrimonial proceedings requires or involves of necessity the element of malignity- though I do not of course doubt that if malignity be in fact established it would be highly relevant to a charge of cruelty. In my opinion, however, the question whether one party to a marriage has been guilty of cruelty to the other or has treated the other with cruelty does not, according to the ordinary sense of the language used by Parliament, involve the presence of malignity (or its equivalent); and if this view be right it follows, as I venture to think, that the presence of intention to injure on the part of the spouse charged or (which is, as I think, the same thing) proof that the conduct of the party charged was "aimed at" the other spouse is not an essential requisite for cruelty. The question in all such cases is, to my mind, whether the acts or conduct of the party charged were "cruel" according to the ordinary sense of that word, rather than whether the party charged was himself or herself a cruel man or woman.....

Bearing in mind the proper approach to matrimonial offence, we are satisfied that the facts and circumstances brought out by the appellant in this case do justify an inference that there was demand for dowry. The demand for dowry is prohibited under law. That by itself is bad enough. That, in our opinion, amounts to cruelty entitling the wife to get a decree for dissolution of marriage.

In the result, we allow the appeal and in reversal of the judgments of the courts below, we grant a decree for dissolution of the marriage. In the circumstances of the case, however, we make no order as to costs.

N. P. V.

Appeal allowed.