

Bombay High Court

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Smt. Nirmala Manohar Jagesha vs Manohar Shivram Jagesha on 13 December, 1990

Equivalent citations: AIR 1991 Bom 259, (1991) 93 BOMLR 373, I (1992) DMC 180, 1991 (1) MhLj 267

Bench: A Savant

JUDGMENT

1. What is meant by the word "cruelly" in matrimonial law? Is the old English law concept of "danger" applicable in India today?. If wild, reckless and baseless allegations of impotency and lack of manliness are made in the written statement, can this by itself amount to cruelty in matrimonial law?. These are some of the questions which arise for determination in this appeal by the original respondent-wife,

2. At the out-set I must mention that in accordance with the mandate of Section 23(2) of the Hindu Marriage Act, 1955, an attempt was made to bring about a reconciliation between the parties. The wife who is now staying at Delhi had come down to Bombay. However, I am informed by the learned Counsel Mr. K.S.V. Murthy for the appellant-wife and Mr. C. G. Patil for the respondent-husband that despite their efforts to bring about the reconciliation, they have not been successful at all. Unfortunately, the parties are staying separately since September, 1980 i.e. for nearly more than ten years now. There is thus, no alternative left but to decide the matter on merits.

3. This appeal by the wife seeks to challenge the judgment and decree dated 30th April, 1983 passed by the learned Assistant Judge, Nasik in Hindu Marriage Petition No. 186 of 1981. The said petition was filed by the husband on 7th September, 1981 for a decree for divorce on the grounds of (i) cruelty under Section 13(1)(ia), (ii) desertion under Section 13(1)(b) and (iii) that the wife was suffering from mental disorder as contemplated by Sec. 13(1)(iii) of the Hindu Marriage Act, 1955. The admitted facts are as under :

4. The parties are Hindus and belong to the Sindhi community. The husband is a lawyer practising at Nasik and the wife is an Arts graduate from Delhi. On 27th April, 1980, the parties were married at Nasik in accordance with Hindu rites. The wife stayed with the husband at Nasik till 5th June, 1980 i.e. for a period of 40 days after the marriage. A common friend Dr. Badlani who stays at Nasik had taken part in bringing about the marriage. On 5th June, 1980, the wife left the matrimonial home and went to stay with Dr. Badlani. On 10th June, 1980, she left Nasik for Delhi. On 24th August, 1980 she came back to Nasik in the company of the father of the husband. The father of the husband is a retired Excise Officer who is now practising as a consultant and had been to Delhi in connection with some work. On his return, the wife accompanied the father of the husband and stayed with the husband at Nasik till 5th

September, 1980 i.e. to stay for a period of 10 days. In between, on 27th August, 1980 the mother of the husband wrote a letter to the brother of the wife, namely Baldev, which letter is at Exh. 40, where the mother of the husband made a general grievance about the wife not being able to perform the household duties. There is no reference to any specific act or instance but the letter is replete with the grievance that the wife is not able to perform the household duties at all. As stated earlier, on 5th September, 1980, after a brief stay for about 10 days with the husband, the wife left. Nasik for Delhi.

5. On 18th November, 1980, the father of the husband wrote to the brother of the wife at Delhi which letter is at Ex. 43. The father referred to the indifferent and defiant mood of the wife and also to the threats given to his wife (mother-in-law of the appellant). However, the father expressed a hope that the members of the wife's family would realise their social as well as moral obligations and require her to come to Nasik. In this letter also there is no reference to any specific instance of either an act of cruelty or an act indicating mental disorder or any psychopathic disorder.

6. On 9th March, 1981, the father of the husband again wrote to the father of the wife making a grievance of the peculiar behaviour of the wife who had acted as a person of "unbalanced mind". It is stated in the said

letter dated 9th March, 1981 at Exh. 44 that her behaviour in the peculiar manner and as a person of "unbalanced mind" was witnessed by the neighbours and visitors to the house. There is also a reference in this letter to some specific instances such as getting up at the dead of night and brushing the teeth, opening the doors, sitting on the floor in the bedroom. Surprisingly again, there is a reference about all these peculiar acts being witnessed by the neighbours or visitors which indicated that the wife had some mental deficiency. These acts are referred to in para 6 of the letter Exh. 44. The said letter further refers to the incident in the first week of September, 1980 when Baldev, brother of the wife, told the husband that the wife was to be taken to

Delhi. At the end of the letter in para 12, the father of the husband points out to the father of the wife that from the facts and circumstances mentioned in the letter, it was concluded that the wife had no inclination or desire to come to Nasik to discharge her social obligations and had withdrawn from the society of the husband. The father of the husband, therefore, called upon the father of the wife to send the wife back to Nasik within 7 days failing which legal proceedings were to be initiated at Nasik.

7. On 6th May, 1981, the husband wrote to the wife, which letter is at Ex. 45. The husband pointed out that for the last 8-9 months she was staying with her parents at Delhi. The husband referred to the wife's absence from Nasik and requested her to come back to Nasik immediately. The husband referred to the abuses hurled by the wife's mother at him at Nasik and also to the abuses given by the wife's mother to his mother as a result of which he was not willing to go to Delhi. However, the husband requested the wife to come to Nasik.

8. On 22nd May, 1981, a telegram was sent by the husband from Nasik to the wife at Delhi informing her that he was seriously ill and that she should reach Nasik immediately. This telegram is at Ex. 41. It appears that in response to this telegram, on 26th May, 1981, the wife returned to Nasik and straightway went to the house of Dr. Badlani. The wife thereafter on the same day, namely, on 26th May, 1981, went and met the husband at his house and enquired about his health, illness and treatment that he was taking. After spending about 10 to 15 minutes at the husband's house, the wife returned to the house of Dr. Badlani and on the same day in the evening she left Nasik for Delhi by train.

9. On the above facts, the petition for divorce has been filed on 7th September, 1981. As stated earlier, the three grounds sought to be made in the petition are as under :

- (i) Cruelty as contemplated under Section 13(1)(ia);
- (ii) Desertion as contemplated under Section 13(1)(ib);
- (iii) Wife's suffering from mental disorder as contemplated under Sec. 13(1)(iii).

A perusal of the petition for divorce would show that in para 1 of the petition, the husband has referred to the alleged erratic behaviour of the wife, which according to the husband, indicated that she was suffering from mental disorder or that she had incomplete development of mind. The conduct and instances that are alleged, without giving any dates are as under :

- (i) Getting up at night and brushing the teeth;
- (ii) Repeatedly asking as to where the soap and towel were kept, though they were kept at the same place every day;
- (iii) Inability to lay bed-sheet properly;
- (iv) Inability to cook food;
- (v) Fancy for going out to the cinema house.

10. In para 2 of the petition, the husband alleged that the wife was sexually cold and was not responsive. The husband stated that during the first spell of 40 days stay he could have intercourse with her only twice and during the second spell of 10 days, he could have intercourse with her only once. The husband alleged that though the wife was reluctant and cold in the matter of sex, he could not get this confirmed from an expert due to short time during which the wife stayed at Nasik. In para 4 of the petition, the husband alleged that the wife had shown disrespect to his parents. The husband is the only son of his parents. The husband's grievance is that on three occasions the wife had threatened the mother of the husband that she would go to the house of Dr. Badlani and then to her parents, and at the dead of night she had opened the kitchen doors and had threatened to leave the house.

11. In para 5 of the petition, there is a reference to the incidents of September, 1980, when the mother of the wife abused the

husband saying that "Ma Ka bhadawa hai". It is alleged that the wife and her mother insisted that the husband should live separately from his parents. On the basis of these averments relief prayed for was that of dissolution of marriage by a decree for divorce.

12. Admittedly there were proceedings under Section 125 of the Criminal Procedure Code in which the Delhi Court had granted a "maintenance of Rs. 500/- per month to the wife. The application for maintenance was filed on 28th July, 1981 and was decided on 28th May, 1984. The husband had filed a revision application to the Sessions Court at Delhi which was dismissed on 21st September, 1987.

13. In reply to these averments in the petition, the wife had filed a written statement which was verified at Delhi on 12th March, 1982. As stated earlier, the wife is a graduate in Arts from Delhi. In the opening paras of her written statement she denied the allegation of her alleged erratic behaviour and mental deficiency. She contended that she was being harassed on account of the demand of dowry of Rs.5000/-. She specifically denied that she suffered from any mental disorder and any subnormality of intelligence. She denied that she did not know cooking and she also denied the alleged incidents indicating erratic and irresponsible behaviour on her part. This has been stated by her specifically in para 2 of her written statement.

14. In the third part of her written statement, the wife has dealt with the averments in para 2 of the petition, where she was described by the husband as being sexually cold and not responsive. Denying this allegation the wife has stated that it was the husband who was impotent and was unable to consummate the marriage. At the end of the para again the wife alleged want of manliness in the husband, leading to an inference of impotency. Since it has become relevant to consider the effect of these specific pleas taken by the wife in her written statement, it will be necessary to quote the exact words of the wife in para 3 of her written statement.

"The entire averments set out in para 2 of the petition stands denied. It is denied that the respondent was sexually cold and not responsive. The respondent states that on the contrary, the respondent feels and strongly apprehends that the petitioner is impotent and is unable to consummate the marriage. The averments set out in para 2 of the petition is rather otherwise and all such allegations are applicable to the petitioner not the respondent. The want of manliness in the petitioner necessarily infers to be the impotency of the petitioner."

In the remaining part of her written statement, the wife denied the various allegations made against her and the averments in the petition. The wife specifically denied the alleged disputes and/or quarrels and/or abuses referred to in para 5 of the petition. The wife then reiterated her version that there was a persistent demand for money. The wife, however, denied that she had deserted the husband. At the end of the para 15, the wife again referred to the dispute about the husband's manliness and potency and stated that it was only to "shed the draw back" that the petition was filed. The exact words appearing in para 15 of the written statement are reproduced below. "The respondent states that the petition is misconceived and false within the knowledge of the petitioner. The petitioner's mother does not require the respondent for want of certain amount which she claims and that the petitioner's manliness or potency is in dispute and, therefore, in order to shed the

drawbacks on the part of the petitioner, the said petition is preferred falsely and therefore it is liable to be dismissed with costs."

15. The only oral evidence on record is the evidence of the husband. In his evidence the husband has tried to depose to his case regarding the alleged cruelty, desertion and mental disorder. He has also deposed to the lack of response from the wife in the matter of sex. He has given some details of the disputes between the two families in the month of September, 1980 resulting in his mother-in-law abusing him in a filthy manner as mentioned above. He has tried to make a grievance of the wife's alleged psychopathic disorder and unusual behaviour. He has referred to the question put by his wife to his mother about how much water to be put for

cooking dal or cooking potatoes indicating thereby that she knew nothing about cooking. He has also referred to her being unable to lay the bed-sheets properly. He admits that though the wife was fond of going to cinema house, it was always at his initiative and in his company. He admits in the course of cross-examination that the word "psychopathic disorder" occurred to him when he had dealt with a case under Hindu Marriage Act. As stated earlier, the husband is a lawyer practising at Nasik. He explains in his cross-examination that he was not addicted to smoking and, therefore, there was no reason for his wife to brush her teeth at the odd hours at night.

16. Unfortunately, the wife has not examined herself. Though the wife has made a serious allegation of lack of manliness and of impotency of the husband, nothing has been suggested to the husband in his cross-examination. The learned trial Judge on the pleadings and the evidence referred to above, framed the following issues and recorded his findings thereon as below.

1) Does the petitioner prove that the

respondent-wife is suffering from

mental disorder and is mentally re-

Starded? ..Yes.

2) Does the petitioner prove that she

was suffering from disability of mind

and psychopathic disorder and sub-

normalities as alleged? ..Yes.

3) Whether it is proved that the respon

dent thereby has treated the peti

tioner with cruelty and rather mental

cruelty? ..Yes.

4) Whether it is proved that the respondent wife has deserted the petitioner for a continuous period of not less than one year immediately preceding the presentation of the petition ..No.

5) Whether the marriage between the

parties is liable to be dissolved by a

decree of divorce as sought? ..Yes.

6) To what relief, if any, is the petitioner entitled? ..As

per order

17. I have heard both the learned Counsel Mr. R. S. V. Murthy for the appellant-wife and Mr. C. G. Patil for the respondent-husband. I have been taken through the

pleadings, the oral evidence consisting of the husband alone and the letters referred to above. As far as the ground of desertion contemplated by Section 13(1)(ib) is concerned, the same can be disposed of briefly. Admittedly, the desertion alleged is of 5th September, 1980. The petition has been filed on 7th September, 1981. Section 13(1)(ib) requires that the respondent has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. In this view of the matter, there is no merit in the ground of desertion, nor did Mr. Murthy seriously dispute the correctness of this finding. On the arguments advanced before me, however, the following points do arise for my consideration.

(1) Whether the husband has made out a case that after solemnisation of the marriage, the wife has treated him with cruelty?

(2) Is it proved that the wife has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the husband cannot reasonably be expected to live with her?

(3) In view of the allegation of impotency and lack of manliness of the husband made by the wife in the written statement, is the husband entitled to a decree for divorce on the ground of cruelty?

18. On the first point of cruelty under the matrimonial law, both the learned Counsel have invited my attention to a series of judgments not only of different High Courts but also to the Supreme Court judgment in the case of Dr. N. G. Dastane v. Mrs. S. Dastane. It is true that Dastane's case was decided under the unamended provisions of the Hindu Marriage Act, 1955. However, the Full Bench of this Court, had an occasion to consider the effect of the amended provisions in the case of Dr. Kesharao Krishnaji Londhe v. Mrs. Nisha Londhe. After referring to the English Doctrine of danger and to the report of the Law Commission, the Full Bench in Dr. Londhe's case observed that in Dr. Dastane's case the standard of cruelty was watered down from the doctrine of "danger" to that of "reason-

able apprehension that it is harmful or injurious for one spouse to live with the other". The Full Bench further observed that even this legislative standard of cruelty on which the Supreme Court led great stress was made to disappear by the amending Act 1976: Cruelty as a matrimonial offence had now (after the amendment of 1976) no specified caveat tagged to it. The argument that the amendment was introduced to nullify the effect of the Supreme Court judgment in Dr. Dastane's case and to bring back the old English law concept of doctrine of danger was rejected by the Full Bench. It was observed that the entire trend of the amending Act was a forward step in the liberalisation of divorce. In para 13 of the Full Bench judgment, this Court observed as under : "What is cruelty simpliciter? It is not possible to, comprehend the human conduct and behaviour for all time to come and to judge it in isolation. A priori definition of cruelty is thus not possible and that explains the general legislative policy -- with sole exception of the Dissolution of the Muslim Marriage Act -- to avoid such definition and leave it to the Courts to interpret, analyse and define what would constitute cruelty in a given case depending upon many factors such as social status, background, customs, traditions, caste and community, upbringing, public opinion prevailing in the locality etc. It is in this background that the suggestion contained in para 2.12 of the 59th Report was turned down and the limiting words, namely, "such cruelty that the petitioner cannot reasonably be expected to live with the respondent" were not incorporated on

the view that "the Court would even in the absence of such words broadly adopt the same approach." After referring to the fact that the divorce on the ground of cruelty is "usually justified on the ground of principle of protection" the final draft as mentioned in para 2.17 was suggested and which, as referred to above, was accepted by the Parliament in toto. The broad test, therefore, will have to be applied in interpreting Section 13(1)(ia) has to be whether the cruelty is of such type that the petitioner cannot reasonably be expected to live with the respondent or living

together of the spouses had become incompatible.

Finally in para 15 of the judgment the Full Bench has observed as under :

"To conclude, in our view, the cruelty contemplated under S. 13(1)(ia) of the Act neither attracts the old English doctrine of danger nor the statutory limits embodied in old S. 10(1)(b). The cruelty contemplated is a conduct of such type that the petitioner cannot reasonably be expected to live with the respondent, and, therefore, Mandala's case, 1980 Mah LJ 391, does not lay down the law on the point correctly."

19. In the case of Smt. Krishna Sarbadhikary v. Alok Ranjan Sarbadhikary , the Division Bench of the Calcutta High Court had an occasion to consider the question of cruelty in matrimonial law as understood in England and in India. On a review of the entire case law, starting from the case of Russell v. Russel reported in 1897 AC 395 and ending with Dr. Dastana's case, (supra), Mr. Justice Chittatosh Mookerjee (as his Lordship then was) observed as under : "Merely by showing that the parties are unhappy because of unruly temper of a spouse or matrimonial wranglings fall considerably short of the conduct which can amount to cruel treatment. It would not be sufficient to show that the other spouse in moody, whimsical, exacting, inconsiderate and irascible. Defects of temperament must ordinarily be accepted for better or for worse. Therefore, there may be unhappiness in a marriage and the Court cannot have for that cause alone find cruelty (see Mulla on Hindu Law, 15th Edn., pages 788-789). "What is cruel treatment must to a large extent be a question of fact or a mixed question of law and fact to be determined within the ambit of Rule and the accepted criteria." It has been held that the legal concept of cruelty comprises two distinct elements. Firstly, the illtreatment complained of and secondly, the resultant danger or apprehension thereto. It is not possible to specify the grounds of treatment of conduct which might constitute

cruelty. It may consist of display of violent temper, unwarrantable indifference to other party's health and happiness deliberate refusal to co-operate. The expression "cruelty" comprehends both physical and mental cruelty. In deciding whether the act, conduct or attitude of behaviour of one spouse towards the other amounts to cruel treatment has to be measured by the resultant danger or apprehension of the victim. Physical temperament, standard of living and culture of the spouses, social ideas, and all other relevant circumstances have bearing on the question whether the acts and conduct complained of amount to the matrimonial offence of cruelty. Conduct alleged must be judged up to a point by reference to victim's capacity or incapacity for endurance in so far as that is or ought to be known to the offending spouse (see cases noted in the foot-note(g) of Mulla's Hindu Law, 15th Edition, page 783). Therefore, a particular treatment in case of one person may amount to cruelty having regard to his temperament, physique and capacity to endure such treatment. It has been said that actual intention on the part of one spouse to injure the other is not an essential factor. "It is necessary in determining this point to enquire from what motives such treatment proceeds." Intentional acts may amount to cruelty even though the one who perpetuated the same had no intention of being cruel. But in doubtful cases the state of mind of the offending spouse would be material and may be crucial. In case the reprehensible conduct of departure from normal standard of conjugal kindness cause injury or apprehension thereof, the Court may consider that the victim should not be called on to endure it. The contrary views expressed in Kaslefsky v. Kaslefsky, (1950) 2 All ER 398 (CA) was not approved by the House of Lords in Gollins v. Gollins, 1964 AC 644 : (1963) 2 All ER 966, which laid down that neither actual or presumed intention to hurt the other spouse was necessary element in cruelty."

It appears that the attention of the learned Judges of the Calcutta High Court was not invited to the Full Bench decision of this Court in Dr. Londhe's case, (supra). The Calcutta High Court

decided Sarbadhikary's case, , on 16th May, 1984 whereas the Bombay Full Bench decided Dr. Londhe's case on 23rd March, 1984. However, the Division Bench of Delhi High Court had an occasion to consider the view of the Full Bench of this Court in Dr. Londhe's case. In the case of Smt. Kamini Gupta v. Mukesh Kumar Gupta reported in AIR 1985 Delhi 221, at the end of para 12 of the judgment, the learned Judges of the Delhi High Court observed as under : "This is a liberalised concept of cruelty

adumbrated in the reformed law of divorce as

amended in 1976. It is settled now that

physical violence is not a necessary ingredient

of cruelty. Unending accusations and imputa

tions can cause more pain and misery than a

physical beating. In Keshao Rao v. Nisha, (FB), we have a recent

reformulation of the concept of cruelty. We

respectfully agree with the restatement of the

law there."

20. The Division Bench of Kerala High Court had an occasion to consider the Full Bench decision of this Court in Dr. Londhe's case . In the case of Gangadharan v. T. K. Thankam on a review of the entire case law, the Kerala High Court observed thus in para 19 : "In the statement of objects and reasons of the Amending Act of 1976, the object was stated to be to liberalise the provisions relating to divorce (vide Gazette of India Extraordinary Part II Jan.-April 1976 page 780) and, therefore, it is difficult to agree with the view that the amendment was intended to restore the law as to cruelty as interpreted by English Courts. Therefore, the intention in bringing the amendment could not have been to reintroduce the concept of danger to life or limb. According to the amended provision, the Courts have to interpret and analyse and define what would constitute cruelty depending upon many factors such as social status of parties, their education, physical and mental conditions, customs and traditions and come to its own conclusion that acts proved would amount

to cruelty in a given case. It is difficult to lay down a precise definition or to give an exhaustive description of the circumstances which would constitute cruelty. The amendment was brought on the basis of the 59th report of the Law Commission which was prior to Dastane's case to the effect that it is sufficient to prove cruelty as a ground for divorce and leave it to the court on the facts of each case to decide whether the conduct amounts to cruelty. In our view the cruelty should be of such a nature as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent that it would be impossible for them to live together without mental agony, torture or distress to entitle the party to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting innumerable mental agony and torture may well constitute cruelty within the meaning of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party."

21. In the petition as also in the evidence, the husband has referred to the behaviour of the wife and certain acts which may either amount to cruelty or may indicate alleged mental disorder. However, even accepting the

liberalised meaning of the word "cruelty" as held by the Full Bench in Dr. Londhe's case (supra), it is difficult to hold that the husband has established that the wife has treated him with cruelty. There is no evidence to come to the conclusion, that the husband cannot reasonably be expected to live with the wife. Cruelty has not been defined in the Hindu Marriage Act, 1955. However, it is now well settled that the conduct complained of should be so grave and weighty as to come to the conclusion that the husband cannot reasonably be expected to live with the wife. It must be more serious than the* ordinary wear and tear of married life. The cumulative conduct, taking into consideration the circumstances and background of the parties has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the

matrimonial law. While doing so, as held by the Full Bench in Londhe's case (supra), several factors such as social status, background customs, traditions, caste and community upbringing public opinion prevailing in the locality etc. will have to be taken into account. Further, as held by the Supreme Court in Dastane's case we are not concerned with the simple trivialities which can truly be described as the reasonable wear and tear of married life. It is in the context of such trivialities that one says that the spouses take each other for better or worse. One can only consider the grave and weighty incidents to find what place they occupy on the marriage canvas. Applying this test, in my opinion, the husband has failed to make out a case that the wife has treated him with cruelty. In my opinion, having regard to the averments made in the petition and in the light of the evidence of the husband, it is not possible to come to the conclusion that the wife has treated the husband with cruelty in the facts of this case. The finding of the learned Judge on this issue will, therefore, have to be set aside.

22. I must, however, hasten to add that the learned Judge has while recording a finding on issue No. 3 also considered the effect of the very irresponsible, wild and baseless allegations made by the wife in her written statement alleging lack of manliness and impotency of the husband. Since I have framed a separate point regarding this aspect, I am presently confining my conclusion on the question of cruelty on the basis of the averments made in the petition filed by the husband and his evidence on record.

23. Coming to the second point of mental disorder, Section 13(1)(iii) reads as under :

Section 13(1)(iii):

has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot live with the respondent.

Explanation : In this clause--

(a) the expression "mental disorder", means mental illness, arrested or incomplete

development of mind psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in a normally aggressive or seriously irresponsible conduct on the part of the other party and whether or not it requires or is susceptible to medical treatment.

Mr. Patil for the husband has fairly stated that it is not his case that the wife has been incurably of unsound mind. The first part of clause (iii) of sub-section (1) of Section 13, has, therefore, no application here. However, Mr, Patil has contended that the wife's case would fall under the second part of clause (iii) of subsection (1) of S. 13 i.e. "or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent." It is, therefore, necessary for the husband to show that, in the first place, the wife has been suffering continuously or intermittently from mental disorder. Secondly, it must also be shown by the husband that the mental

disorder is of such a kind and to such an extent that he cannot reasonably be expected to live with the respondent. As stated earlier, the petition for divorce merely alleges some acts of erratic behaviour on the part of the wife. The wife stayed with the husband for two brief spells, namely, one of 40 days between 27th April and 5th of June, 1980 and the other of 10 days between 24th August and 5th September 1980. Though in the letter (Ex.44) dated 9th March 1981 sent by the father of the husband to the father of the wife, it is alleged that there were several neighbours and visitors, who had witnessed the peculiar manner in which the wife was behaving and acting as a person of "unbalanced mind". Unfortunately no such witness has been examined from amongst the said neighbours and visitors. Admittedly, there is no medical evidence at all in this case. It is true that the wife has not entered the witness box. It is also true that the standard

of proof in a matrimonial case is merely that of preponderance of probabilities and not of proof beyond reasonable doubt. As has been held by the Supreme Court in Dastane's case (supra), proof beyond reasonable doubt is a proof by a higher standard which generally governs the criminal trials or trials involving enquiry into the issues of quasi-criminal nature. But, where the issue is one of cruelty, in matrimonial law, the test to apply is whether on a preponderance of probabilities the relevant fact is proved. In civil cases, this normally is the standard of proof to apply for finding whether the burden of proof has been discharged.

24. Bearing the above test in mind, it is difficult to accept the husband's contention that the wife has been suffering continuously or intermittently from mental disorder. Assuming that one can come to the conclusion that a few stray instances indicating a short tempered nature and somewhat erratic behaviour on the part of the wife amounted to her suffering continuously or intermittently from mental disorder, it is not at all possible to hold that this alleged mental disorder is of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the wife.

25. Mr. Murthy has rightly invited my attention to the decision of the Supreme Court in the case of Ram Narain v. Rameshwari . In that case, the husband has alleged that the wife was schizophrenic and was suffering from such a mental disorder as to entitle him to a decree for divorce under Section 13(1)(iii) of the Act. The Supreme Court, however, in para 10 of the judgment has observed thus :--

"The context in which the ideas of un-soundness of mind and mental disorder occur in the section as grounds for dissolution of a marriage, require the assessment of the degree of mental disorder". Its degree must be such as that the spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognised as grounds for grant of decree. If the mere existence of any degree of mental abnormality

could justify dissolution of a marriage few marriages would, indeed survive in law."

I am, therefore, of the opinion that in the present case the husband has not established that the wife has been suffering continuously or intermittently from any mental disorder. There is, therefore, no question of the husband having further established that the mental disorder is of such a kind and to such an extent that the husband cannot reasonably be expected to live with the wife.

26. Coming to the third and last point of cruelty on the part of the wife, viz., the making of irresponsible, wild and baseless allegations of impotency and lack of manliness in the husband, the learned Trial Judge in para 11 of his judgment has quoted the said allegations contained in para 3 and para 15 of the written statement which have already been reproduced above. After having reproduced these averments, the learned trial Judge has referred to the fact that the wife had not entered the witness box, nor had she led any evidence to show the lack of manliness and the impotency of the husband. The learned trial Judge has, therefore, held that these accusations go to establish mental cruelty on the part of the wife towards the husband.

27. Mr. Patil for the husband has invited my attention to a number of decisions in support of the proposition that where a spouse makes irresponsible, wild and baseless allegations and fails to justify the same in evidence, this by itself, would amount to cruelty in matrimonial law. Following cases need mention in this

behalf :

(i) Iqbal Kaur v. Pritam Singh . A perusal of this case would show that the wife was stated by the husband to be living the life of a prostitute and in the environments of immorality without any proof of these allegations, it was held that she could legitimately ask the Court to give a finding that she has a reasonable apprehension in her mind about the harmful or injurious effect of living in the matrimonial home. It was held that the wife was treated with such cruelty as to cause reasonable

apprehension in her mind that it would be harmful or injurious for her to live with the other party. It is true that this was a case under the old Section 10(1)(b) of the Hindu Marriage Act where the wife was entitled to get a decree for judicial separation on the ground of cruelty. However, the proposition of law which emerges from the said decision is that making of an unwarranted allegation of immorality of the wife would justify her getting judicial separation on the ground that the making of such an allegation itself amounts to cruelty.

(ii) Smt. Sumanbai v. Anandrao . In this case the husband had filed a petition for restitution of conjugal rights on the ground that the wife had withdrawn from the society without reasonable excuse. The trial Judge had dismissed the husband's petition under Section 9. But on appeal the appellate Judge had allowed the husband's petition and decreed restitution of conjugal rights. On a second appeal by the wife, to the High Court, this Court referred to the Punjab decision in Iqbal Kaur's case (supra) and came to the conclusion that : "There can be no more insulting injury to the wife than her own husband doubting her chastity. It must be held that if such allegations are lightly made and persisted in filing the petition, the husband is not entitled to any relief under Section 9 of the Hindu Marriage Act."

It is true that this Court was not dealing with the question of grant of relief on the ground of cruelty to the wife, but was only dealing with the question as to whether this was a reasonable excuse for the wife to withdraw from the society of the husband. Having held that the husband's making wild and baseless allegations was a reasonable excuse for the wife to withdraw from the society of the husband, the High Court allowed the wife's second appeal and dismissed the husband's petition for restitution of conjugal rights.

(iii) Smt. Shanti Devi v. Raghav Prakash . This is a case, where the husband had filed a petition for

divorce on the ground that the wife had treated him with cruelty and was also guilty of desertion. Here the husband who was an academician had alleged that the wife had burnt his thesis and had made allegations that he was impotent. There was also an allegation that the wife had abused the husband asserting her own potency and the impotency of the husband. Dealing with such facts, Lodha, J. observed in para 21 as under :-- "Similarly, the allegation of Shanti Devi that the husband is impotent in the form of abuse in the house cannot be lightly ignored as in a matrimonial matter it is serious stigma on the manhood and is bound to cause great mental agony and pain resulting in cruelty to the husband."

It is true that this was a case where the husband had led the evidence to show that the wife was abusing him as a impotent person. In the case before me, the wife has made allegations in para 3 and has repeated the same in para 15 of her written statement without caring to either put her case to the husband in his cross-examination or to examine herself on the point. As stated earlier, there is no evidence whatsoever in support of this allegation of the wife.

(iv) Smt. Savitri Balchandani v. Mulchand Balchandani . This was a case where the husband had filed a petition for divorce on the ground of cruelty under Section 13(1)(ia) as also on the ground of desertion under S. 13(1)(ib). The husband had alleged that the wife had illicit relationship with respondent No. 2 Jethanand. In the written statement filed by the wife, she had traversed the assertions of illicit connection between her and Jethanand. However, by way of an amendment application, the husband had amended his petition and had deleted the allegation of illicit connection between his wife Savitri and second respondent Jethanand. In the amended written statement, the wife had denied the allegations of cruelty, but had added that the husband was

a man of bad character and was known for his weakness for women. It was alleged that the husband used to be in bad company of women and was known in the locality for this. However, at

the trial, after the arguments were over, but before the judgment was delivered, the wife made an application to delete these allegations made against the husband. The application for amendment of the written statement was rejected. In paras 30 and 31 of the judgment, the Delhi High Court observed thus :--

"The question is -- Are false scandalous malicious, baseless and unproved allegations made in the written statement, cruelty to the other party? The trend of judicial authority in this High Court is that false, malicious, baseless, unproved allegations made by one person against his or her spouse, in letters addressed to the employer of the spouse, to any person in authority, or the police are cruelty to that spouse, as in *Shakuntala Kumari v. Om Prakash*, AIR 1981 Delhi 53, *Lajwanti Chandhok v. O. N. Chandhok*, (1981) 2 DMC 97 : AIR 1982 NOC 111; *Kiran Kapur v. Surinder Kumar*, 1982 Rajdhani LR (Note) 32 at page 36; *Shardha Nand Sharma v. Kiran Sharma*; (1985) 28 Delhi LT (SN) 32. In *Girdhari Lal v. Santosh Kumari*, (1982) 1 DMC 180 (S. S. Kang, J.) Punjab & Haryana High Court held that a false police complaint against the spouse is cruelty. In *Jorden Dienadoh v. S. S. Chopra*, (1982) 1 DMC 224 : AIR 1982 NOC 313, it was held that letters written to the superior officer were very damaging to the reputation of the petitioner. In that case wild allegations were made that the petitioner, a Class 1 Officer in Ministry of External Affairs, was being exploited for her weakness to their advantage," by these letters to the respondent has tried to malign her and has also accused her of adultery." On appeal, a Division Bench of this Court confirmed the finding of the single Judge. The judgment of the Division Bench is reported only as a short note in AIR 1985 NOC 45 (Delhi) (D. K. Kapur and D. P. Wadhwa, JJ.) :

"It being well settled by authority that false, defamatory, scandalous, malicious, baseless and unproved attegations made against the spouse in letters, and alleged complaints to superiors, or persons in authority, are cruelty; is there any reason why these judgments

should not be applicable to the false, scandalous, malicious, baseless and unproved assertions made in the written statements?"

In para 33 of the judgment, the Delhi High Court referred to the requirement of the subsequent events being taken into account by the Courts relying upon the Supreme Court decision . The Delhi High Court came to the conclusion that for shortening the litigation between the parties and for doing complete justice between the parties, it was necessary to take into account subsequent circumstances and events. Reference was made to Section 21-B of the Act and it was observed in para 38 as under : "All matrimonial proceedings need to be decided expeditiously. It is desirable that matrimonial litigation be shortened, in fact Section 21-B of the Act requires it and multiplicity of proceedings of matrimonial nature be prevented."

It is evident from para 43 of the judgment in the Delhi case that the wife having failed to justify the allegations made by her, it was held that on account of false and baseless allegations made by her in the written statement, she was guilty of the charge of cruelty to the husband and the husband was held entitled to a decree for divorce on this ground alone. In the result, the wife's appeal was dismissed. I am in respectful agreement with the view expressed by the Delhi High Court in Savitri's case .

(v) *Ashok Sharma v. Smt. Santosh Sharma* , This case was also decided by the same learned Judge -- Mahinder Narain Ja who decided Savitri's case (supra). It was held in this case that in a case for divorce, false, baseless, scandalous, malicious and unproved allegations made in the written statement may amount to cruelty to the other party and that party would be entitled to get decree of divorce on that ground. False, defamatory, baseless, scandalous and malicious allegations in the written statement can be taken into account for the purpose of granting relief in matrimonial matters and

this is based upon the principle on which subsequent events like allegations in the written statement can be taken into account in certain circumstances when (a) litigation between the parties ought to be shortened; and (b) to do complete justice between the parties. In this case, the wife had made allegations in the written statement that the husband was in company of drunkards and the husband and parents-in-law of the wife wanted that the wife should join with the alleged drunkards friends of the husband in drinking and enjoying with them. The allegations were held to amount to cruelty. Not only the assertion is that the husband wanted the wife to join his friends in drinking, but also that the parents, the mother and father of the husband also wanted her to join in the drinking party. Such an allegation made in the written statement would entitle the party against whom such an allegation is made, to a finding of cruelty in his favour. In the result, the learned Judge decreed the husband's suit for divorce on the ground of cruelty alone.

28. As against all the above cases cited by Mr. Patil, Mr. Murthy for the wife relied upon the decision in the case of *Sadan Singh v. Resham*. The learned Judge has observed in para 10 of the judgment as under :-- "Now I must observe, at the very outset, that a fact in order to afford a cause of action for any relief, must precede the initiation of the action. Consequently any allegation made by the wife in her written statement, could afford no cause of action for any relief on the husband's petition."

In that case, the wife had alleged in her written statement that the husband had illicit relationship with his sister-in-law. That was not proved. This allegation could not be established by the wife. However, on facts, it was held that in the first place, the allegation would not amount to cruelty and at any rate the cruelty must be deemed to have been condoned by the cohabitation between the husband and the wife, which resulted in the birth of a child. On the facts of the case before the Allahabad High Court, it was held that the husband was not entitled to any relief.

29. In despair, Mr. Murthy also advanced an argument that the averments made in paras 3 and 15 of the written statement seem to be unintentional. It is not necessary to discuss the entire case law on the subject as to whether intention is a necessary ingredient in this matter. I may only refer to a passage in *Mulla's Hindu Law*, 15th Edition by S. T. Desai at pages 786 and 787 where, on a review of the entire case law, it has been observed as under :--

"Intention:-- Actual intention on the part of one spouse to injure the other is not an essential factor. In a passage which has become locus classicus it was observed :

It is not necessary in determining this point, to inquire from what motive such treatment proceeds. It may be from turbulent passion, or sometimes from causes which are not inconsistent with affection and are indeed often consistent with it, as the passion of jealousy. If bitter waters are flowing, it is not necessary to inquire from what source they spring." In *Jamieson v. Jamieson*, Lord Merriman reviewed the law on the subject and pointed out that actual intention to injure was not an essential factor, and that intentional acts may amount to cruelty even though there was no intention of being cruel. Motive, malignity or malevolent intention, it is well recognised, are not essential ingredients but where they exist they would be factors of considerable importance for acts done with malevolence are likely to bear fruit in acts of a serious and grave nature. In a doubtful case actual intention to hurt may even be of decisive importance. Where there is proof of a deliberate course of conduct on the part of one intended to hurt and humiliate the other spouse and so persisted in that it seriously affects the mental and bodily health of that party cruelty can easily be inferred. Studied neglect or a course of degradation may well prove more deleterious to the health of a spouse than the receipt of a blow. As pointed out by Lord Reid in the case mentioned above there can hardly be a more grave matrimonial offence than to set out on a course of conduct with the deliberate intention of wounding and humiliating the other spouse and making his

or her life a burden and then to continue in that course of conduct in the knowledge that it is seriously affecting his or her mental and physical health. Where such course of conduct is shown it is no answer that there was no actual intention to treat the other spouse with cruelty. In *Gollins v. Gollins* the House of Lords

overruled some earlier decisions of courts in England and laid down that neither actual nor presumed intention to hurt the other spouse was a necessary element in cruelty."

30. In this behalf, I may also refer to a decision in *Trimbak Narayan Bhagwat v. Smt. Kumudini Trimbak Bhagwat*. This was a case where an attempt was made by the husband during his insanity to strangulate wife's brother on one day and her young child on the next day. The husband's conduct amounted to mental cruelty and it was held that motive or intention to be cruel was not necessary, if the conduct could otherwise be held to amount to cruelty. On a review of the English cases, it was held in para 12 of the judgment as under :-- "As stated above, the evidence in this case does not justify the conclusion that the husband was not aware of what he was doing assuming however, that the husband was not capable of knowing the nature of his acts, still, that by itself would not afford a defence to an action of judicial separation. In view of the decision of the House of Lords in (1963) 2 All ER 994 the distinction made in some judicial pronouncements between the two parts of McNaghten rule no longer remains valid. Defence of insanity is not available even on the first part viz. that the offending spouse is not capable of knowing what he is doing. If the conduct is held to be cruelty regardless of motive or intention to be cruel. The conduct of the husband in this case is such as to amount to cruelty, even in the absence of an intention to be cruel. Insanity therefore, should not bar the relief claimed by the wife. On the facts of this case, the schizonphrenia from which the husband has a predilection to suffer periodically is no good defence to the plea of cruelty put forward on behalf of the wife. The question whether the husband was

capable of forming an intention to be cruel or actually intended to be cruel is a matter of no consequence in the present case."

It is, therefore, well settled that detention is not a necessary ingredient.

31. In view of the above, I am of the opinion that though the husband has failed to prove points Nos. 1 and 2 framed above, he would be entitled to a decree for divorce on the third point namely, cruelty, as a result of the wife's having made wild, reckless and baseless allegations in the written statement. Though, therefore, the husband has failed to prove on the averments made by him in the petition and on his evidence that the wife has treated him with cruelty, still he is entitled to succeed under Section 13(1)(i). Similarly, the husband has failed to prove that his wife was suffering continuously or intermittently from mental disorder of such a kind and to such an extent that he cannot reasonably be expected to live with the wife. The decree of the learned Trial Judge on both these grounds will have to be reversed.

32. However, in the view which I have taken, the husband would be entitled to a decree for divorce on the ground of cruelty under Section 13(1)(ia) of the Act on the basis of the allegations made by the wife in paras 3 and 15 of the written statement noted above.

33. In the light of the above, my answers to the questions framed in the first para of this judgment are as under :--

(i) Cruelty in the matrimonial law means conduct of such type that the petitioner cannot reasonably be expected to live with the respondent.

(ii) It would follow that the old English law concept of danger is no longer applicable in India.

(iii) The making of wild, reckless and baseless allegations of impotency and lack of manliness -- itself amount to cruelty in the matrimonial law.

34. In view of the above, the appeal partly succeeds. The judgment and decree of the learned Trial Judge is partly modified and

it is held that the husband-respondent is entitled to a decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955 on the grounds stated above. No order as to costs.

35. Appeal partly allowed.