
(1965) 04 BOM CK 0009

Bombay High Court

Case No: A.F.A.D. No. 1093 of 1964

Trimbak Narayan
Bhagwat

APPELLANT

Vs

Kumudini Trimbak
Bhagawat

RESPONDENT

Date of Decision: April 8, 1965

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100, 101
- Hindu Marriage Act, 1955 - Section 10(1)

Citation: AIR 1967 Bom 80 : (1965) 67 BOMLR 837 : (1966) ILR (Bom) 482 : (1966) MhLj 83

Hon'ble Judges: Naik, J

Bench: Single Bench

Advocate: V.N. Gadgil, for the Appellant; V.B. Rege, for the Respondent

Judgement

1. This appeal arises out of proceedings started by the wife against her husband for judicial separation. The facts giving rise to this appeal may be briefly set out as follows:

The appellant (who will hereinafter be referred to as the husband) was married to the respondent (who will hereinafter be referred to as the wife) on 17-5-1949. The wife as well as the husband came from respectable families. The wife was a graduate at the time of the marriage and the husband had passed the Diploma of Chartered Accountancy. At the time of the marriage, the husband was working in partnership with another person, which partnership had two offices, one at Hyderabad and the other at Bombay. The husband started working in the office at Hyderabad. In the month of August 1949 the wife went to stay with her husband at Hyderabad. Two issues were born to the wife from the husband, one on 19-4-1950 by name Ravindra and the other on 9-8-1951 by name Vikram. Both were sons. Disputes started between the partners of the firm and eventually the husband closed the office at Hyderabad and returned to Poona, where his father has a house. This was by about the end of 1952. The disputes were a prolonged affair and

the husband had to stay in Bombay for the purpose of taking accounts. But, eventually, he got a paltry sum of Rs. 52 or so for his share. All the while the husband remained unemployed. He had taken a shock both as a result of the partnership not yielding him any profits and also as a result of prolonged unemployment. He became moody and went on brooding his own affairs. He was secretive and kept his sorrow to himself. He did not like his wife asking him questions in regard to financial affairs and would resent any intervention on her part. His eccentricity went on increasing and by about February 1954 he lost balance of his mind. One day he went in a rickshaw and wandered for a long time. The wife had to go in search and bring him back. On 15-2-1954 the husband was admitted in the mental hospital at Yeravada as his mind was completely unhinged. The husband used to quarrel with his wife and also beat the children without rhyme or reason. He was discharged from the hospital on 6-7-54. He had not been completely cured. He used to sit brooding for hours together doing nothing. He did not like his wife to take up any employment and earn something for the family. The husband's father had retired from the Agricultural Department and was not in a position to maintain the family of the husband and wife. The husband continued to remain unemployed even in 1955. In the month of May 1955 a marriage ceremony was held in the house of the parents of the wife at Thana. The husband attended the marriage. He was keen on giving some present to the bridegroom, but he had no money. That completely upset him and his mind became deranged. On 22-5-1955 he was again admitted to the mental hospital at Yeravada as a voluntary boarder. He was discharged on 10-12-55. But he continued to be erratic, eccentric and moody. He then started conducting some coaching classes. An incident took place on 8-1-58 while he was conducting the class. There were only three students in the class. One of them was Suresh, the brother of the wife. The husband was explaining some problems to the students, but he faltered and was unable to find a solution to the problem. He began to shout. People collected. Suresh the brother of the wife took him home. Suresh was asked to remain in the house for that night and sleep in the room of the husband. Accordingly, Suresh and the husband slept in one room. The wife slept in the adjoining room. The parents of the husband slept in a third room. At about 12.30 midnight the husband went near Suresh and started strangulating his neck by holding fast to his neck. Suresh raised cries. The wife went in. The father of the husband went there. Suresh was struggling to get himself extricated. The father hit the husband and separated Suresh from his clutches. Next morning i.e. 9-1-1958, as the husband was taking tea, Ravindra was sitting on the lap of his mother i.e., the wife. Suddenly, the husband pounced on his and started strangulating Ravindra by holding his neck. Suresh intervened and snatched Ravindra from the hands of the husband. The same day, the husband was sent to the mental hospital as a voluntary boarder on the third occasion. The wife's case is that as a result of the abnormal behaviour of the husband, she has entertained an apprehension that there is danger to her life. The wife could have left the house immediately after this incident. But, she did not do so firstly because the husband was sent to the mental hospital and the danger was at least temporarily averted and secondly because, she was studying for her B. T., Examination and the examination was drawing near. The wife learnt that, the husband was to be

discharged on 21-4-1958. Sensing danger to herself and her children she left for thana on 18-4-1958. the husband was discharged on 21-4-58. After his discharge he wrote letters to the wife asking her to return to his house. The wife, however, did not return. On 1-7-60 she lodged the present petition for judicial separation on two grounds; (1) That the husband has wilfully deserted her for over the statutory period and (2) that he has treated her with such cruelty as to cause reasonable apprehension in her mind that it is harmful for her to live with her husband.

(2) the finding of the Courts below have gone against the wife on the point of desertion Mr. Rege, for the respondent, also has not pressed that point in this appeal. Nor is that point now open for consideration in the Second appeal.

(3) The husband admitted that he was put in the mental hospital three times on the ground that his mind was deranged on those occasions. He, however, denied that he was brooding over his affairs or that he was moody or eccentric. In particular he denied that his behaviour was in any way cruel.

(4) The trial Court held that since the so called cruel behaviour of the husband took place during the husband's insanity, that cannot afford a ground for asking for judicial separation u/s 10(1) (b) of the Hindu Marriage Act. Consequently, it dismissed the petition. The wife went in appeal. The appellate Court held that taking an overall view of the conduct of the husband and the peculiar circumstances in which he was placed, his behaviour amounted to legal cruelty, in the sense that it was sufficient to create a reasonable apprehension in the mind of the wife that it was not safe for her to remain under the roof of the husband. Consequently, it allowed the appeal and also the petition and granted judicial separation. It is against that judgment that the husband has come up in second appeal

(5) It is an admitted fact that the husband has not treated the wife any physical cruelty. No act of beating nor even of expostulation towards the wife has been attributed to the husband. This is purely a case of mental cruelty. According to the wife, a number of circumstances transpired against the husband. In the first place, he was not happy; that his partner and eventually the partnership did not bring him any benefit and that the husband remained unemployed from 1952 right upto 1958. The husband was in very much straitened financial circumstances. He had his own peculiar notions as to how a wife should behave towards husband. These circumstances heavily weighed upon the mind of the husband and the husband started behaving in an abnormal manner towards her and her children. Even so, the wife put up with all the sufferings till 1958. It is only after the incidents, which took place on 8-1-1958 and 9-1-1958, that the wife was convinced that it was no longer safe to her and her children to stay with her husband. The only answer that has been provided on behalf of the husband to the wife's plea of cruelty is that, what ever he did, under the fits of insanity.

(6) In appreciating the case put forward on behalf of the wife, it is necessary to recall the general character and behaviour of the wife. The husband himself has paid a glowing tribute to the wife. Let me use his own language.

"She (the wife) has the quality to face calamities. she treated me with love. she did not insult any time my parents. she treated me with respect. She would not do any thoughtless thing by being influenced by mere appearance.

On the admissions made by the husband, it is clear that the wife would not have rushed to the Court unless she apprehended that there was danger to herself and her children.

(7) Side by side with the certificate given to the wife, let us peep into the mind of the husband and try to see what his views are towards such a wife. The husband says:

"It was my nature that my wife should not talk to me about my financial affairs. I did not expect her to tell me to take a job. I never expected her to enquire about my health. I expect her to manage the family, educate children and keep good relations with the family. It was my responsibility to maintain family. I do not agree that it is equally wife's responsibility. If the wife earns, it would mean that the husband is subsidiary and I would not take this position. I would not like my wife to earn even if I was unable to work."

He has also stated that he got terribly shocked when he found his wife sending a registered letter to his mother from Thana. Admittedly the husband was unemployed and was not earning anything for a number of years. In spite of this, because of his peculiar notions about the position of women, he would not allow the wife to take up any job. One can imagine the sufferings which the wife must have undergone during the period from 1952 to 1958. The wife put with all the difficulties heroically for full six years and the last straw that broke her patience were the incidents, which took place on 8-1-1958 and 9-1-58.

(8) As regards the incidents which took place on the 8th and 9th January 1958, there is a slight divergence between the versions put forward on behalf of the wife and the husband. On the main outline there is no dispute. On 8-1-1958 as the husband was conducting a coaching class, he posed a problem and finding that he was unable to find a solution, he got upset and started shouting. He had to be removed from the class and was removed by Suresh. At about 12-30 midnight he went near Suresh and tried to strangulate him. The wife says that she actually saw the husband trying to strangulate her brother, Suresh has fully supported this version. The husband's father has been examined. He has admitted that when he went there, a struggle was going on between the husband and the wife's brother, Suresh. Evidently, the husband's father went there at a late stage. That may account for his not having witnessed the actual throttling. The appellate Court has fully believed the version put forward by the wife and supported by Suresh. The finding recorded by the appellate Court cannot be called in question in this appeal.

(9) As regards the incident, which took place on 9-1-1958 the main point made out by Mr. Gadgil, for the appellant, was that there is no mention of this incident in the plaint, although the incident of 8-1-58 has been referred to. There is not much substance in this contention. It is not necessary for the wife to relate the evidence on which she proposed to rely. It is true that the incident of 8-1-58 was married. But, that is a superfluity. The appellate Court has believed the wife and, in my opinion, very rightly. Here is an obedient wife, a wife who put up with all possible hardships and privations for a long period of six years. It is unimaginable that such a obedient and submissive wife would trot out a false incident and try to foist it upon the husband. The evidence of the wife and Suresh clearly shows that the husband tried to strangle the young child, Ravindra, as it was sitting on the lap of his mother on that day. It is mainly because of this incident and the fear endangered in her mind on that account that the wife seems to have apprehended danger to her life and her children. It is difficult to say that the apprehension was without sufficient ground.

(10) Mr. Gadgil contended that assuming that the two incidents took place as alleged, still, in the first place, they do not establish cruelty towards the wife and in the second place, they were committed during the fits of insanity. The first argument leaves me unimpressed. This is not a case of physical cruelty. This is a case of mental cruelty of torture, and if the husband's manner attributed to him, not only her feelings would be injured thereby, but a grave apprehension would be created in her mind regarding danger to the life of the children and herself. On the second question about derangement, the evidence of Dr. Mujawar discloses that the husband was suffering from, what is known in medical terminology, schizophrenia. It is in evidence that the husband used to say at times that he was Submersing and at times that he was Mahatma Gandhi and at other times he used to say that he was C. D. Deshmukh etc. Dr. Mujawar has quoted Frederick W. Price from his book Text Book of the Practice of medicine", at pages 1940 and 1941, about the symptoms of schizophrenia as follows:

"Schizophrenia may be regarded for clinical purposes as a form of mal-adaptation in which there are characteristic defects of inner harmony and consistency in behaviour, thought and emotion. These are rarely seen in childhood, but from puberty onwards they may appear in varied combinations (often in persons who for years have been introspective and unsociable). There is discrepancy between mood and utterance, disturbance of conduct (briefly summed up as catatonic or hebephrenic) self-absorption and incapacity for sustained thinking along normal lines. A guarded or artificial demeanour may conceal these essential features, whereas they may be conspicuous in a florid or "deteriorated" case. Hallucinations and delusions may fill out the picture; effective or other morbid types of reactions may complicate it."

It is not, however, clear from the evidence as to whether the two principal acts committed by the husband, one towards Suresh and the other towards Ravindra, were committed while the husband was actually suffering from a split personality. In the written statement, he denied the correctness of the first incident, which implies that he was aware of the

same. In his deposition, however, he has explained that he did not remember anything about the incidents of the 8th and 9th January 1958. I am, therefore, prepared to proceed on the footing that on both these occasions, the husband was not aware of the nature of the act that he was committing.

(11) Proceeding on that footing, the first question is, would it be correct to say that insanity affords defence to the plea of cruelty? Mr. Gadgil relied upon a passage in "The Law and Practice of Divorce and Matrimonial Causes" by Tolstoy, 5th Edition, at page 62:

"Insanity is a defence to a charge of cruelty, and both limbs of McNaghten Rules apply, that is to say, a spouse who does not know the nature and quality of his acts, i.e., does not know what he is doing, or who, while knowing what he is doing does not know that what he is doing is wrong is not guilty of cruelty."

This statement is based on the decision in *Palmer v. Palmer* (1954) 3 All ER 494. Mr, Gadgil relied upon a decision of the Court of Appeal in *Swan v. Swan* (1953) 2 All ER 854. The facts of that case were as follows:

For several periods during the married life the husband had been a voluntary patient in a mental hospital. During the intervals in which he had returned to the matrimonial home he had committed acts of cruelty towards his wife. On the hearing of the wife's petition for divorce on the ground of her husband's cruelty there was medical evidence which was accepted by the Court that at the material times the husband did not know the nature and quality of his acts.

It was held:

"In these circumstances the husband was not capable of being guilty of cruelty to the wife."

Mr. Gadgil also cited the decision in (1954) 3 All ER 494. In that case, the facts were:

A husband suffering from such delusions seriously assaulted his wife on several occasions. The medical superintendent of a mental hospital at which the husband had been treated for several years gave evidence, that, when committing the assaults, the husband would not know that his acts were wrong, because he was suffering from delusions. On the evidence, however, it appeared that the husband struck his wife on several occasions because he thought she had been unfaithful to him, which was not the case, and because she wanted him to go back to the mental hospital and he did not wish to go, and the evidence showed that he recognised that he had ill-treated her.

It was held:

"the wife was entitled to a decree nisi for divorce on the ground of cruelty, because both limbs of McNaghten rules applied on the hearing of petitions for divorce on grounds

involving insanity and assault or the inflicting of personal injuries and because on the facts, the husband knew the nature and quality of his acts, that is to say, of his assaults, and knew that what he was doing was wrong;; therefore, he was not excused from responsibility for his acts on the ground of insanity." It is apparent that in the first case, only one part of the McNaghten rule viz., the husband did not know the nature of his act, was established and it was held that it afforded a complete defence to the charge of cruelty. On the footing that the husband did not know what he was doing;, the second part viz, whether he knew that what he was doing was wrong, did not arise for consideration. In the second case, the husband knew the nature and quality of his acts (i.e. assaults) and also knew that what it was held that both parts of the rule were satisfied. It is noteworthy that a distinction has been made between the two parts of the McNaghten rule. No difficulty arises when the first part is established viz., that the husband did not know the nature of his acts i.e., what he was doing, and that affords a complete defence to the charge of cruelty. Difficulty, however, arises when it is only established that the husband while knowing what he was doing did not know that what he was doing was wrong.

(12) The position has been explained in the two recent decisions of the House of Lords. In *Gollins v Gollins* (1963) 2 All ER 966, the question arose as to whether the husband would be held guilty of cruelty when he was not deliberately treating the wife with cruelty and in fact was oblivious of the consequences of his actions upon his spouse. It was held:

"An intention on the part of one spouse to injure the other is not a necessary element of cruelty as a matrimonial offence, though the presence of such an intention. if it exists, is material and may be crucial."

The House of Lords further held:

"Whether cruelty, as a matrimonial offence, has been established is a question of fact and degree, which should be determined by taking into account t the particular individuals concerned and the particular circumstances of the case, rather than by any objective standard; accordingly, in cases where the two spouses are of normal physical and mental health, and the conduct of the respondent spouse, so considered, is so bad that the other should not be called on to endure it, cruelty is established, and then it does not matter what was the respondent"s state of mind, i.e., it is immaterial whether the respondent"s conduct was "aimed at" the other spouse or due to unwarranted indifference, attributable, perhaps, to selfishness or laziness."

These observations support the conclusions which I have already drawn viz., that the behaviour of the husband taken in its perspective was such that it was beyond the endurance of the wife. In *Gollins*" case (1963) 2 All ER 966 the facts were more or less similar to the facts of the present case, except that there was no question of insanity so far as the husband was concerned. Only his behaviour was considered as abnormal. The decision in *Gollins*"s case (1963) 2 All ER 966 was pronounced on the same day as the

decision in *Williams v. Williams* (1963) 2 All ER 994. In *Williams*" Case (1963) 2 All ER 994 the precise question that came up for consideration was how far insanity is a defence to the charge of cruelty in matrimonial proceedings. The entire case-law on this question was reviewed by the House of Lords including the two cases referred to above viz. 1963 3 All ER 854 & 1954 3 All ER 494. On the facts of the case the question that arose for consideration was, whether insanity could afford a defence when it was established on evidence that the husband knew what he was doing but did not know that what he was doing was wrong. The House of Lords was not disposed to base its decision on the distinction between the two parts of the McNaghten rule and has gone into the general question viz., how far insanity is a good defence and if it is a good defence, under what circumstances and within what limitations. Some of the Law Lords have emphasized that the distinction made between the two parts of the McNaghten rules is illogical and untenable. The facts in *Williams*" case 1963 2 All ER 994 were as follows:

A husband by his conduct caused damage to his wife's health. His conduct took the form of deliberately accusing his wife of adulterous associations, but he thought that such accusations were justified because he induced to think by imaginary voices which informed him of them as fact. The wife petitioned for a divorce on the ground of cruelty. The trial Judge found that the husband knew what he was doing in making the accusations, but that he did not know that they were wrong the trial Judge would have granted a decree, but felt constrained to dismiss the petition because of the husband's insanity. On appeal from a decision of the Court of Appeal that the second limb of the McNaghten rules afforded the husband a defence, it was held (Lord Hedson dissenting); the fact that the husband did not know that his acts were wrong did not of itself constitute a defence to a suit for divorce on the ground of cruelty.

It was further held:

"Insanity of a respondent spouse is not necessarily a defence to a suit for divorce on the ground that the respondent treated the petitioning spouse with cruelty; but insanity is a factor to be taken into account in applying the test whether in all the circumstances of the case the respondent's conduct is of such gravity that he has by his acts treated the petitioner with cruelty, e.g., if the conduct were such that it would amount to cruelty only if aggravated by intention to hurt, a spouse who could not form such an intention would not be held to have treated the other with cruelty." It would at once be clear from this decision that it is not necessary to attribute a guilty mind or mens rea to the husband for the purpose of establishing cruelty. Lord Reid in regard to McNaghten rules has observed at p. 1002:

"I have come to be clearly of opinion that it would be wrong to take the McNaghten rules as a test. Not only have these rules been subject to persistent and powerful criticism for nearly a hundred years but their strict application would lead to capricious results. It appears to be the general opinion of medical men, who at least have a better understanding of insanity than lawyers, that there are types of insanity not within the rules

which deprive the insane man of choice or responsibility just as much as those types which are covered by the rules. So if guilt, culpability, or blameworthiness in some degree is to be held a necessary element in cruelty, I can see no rational basis for holding that if two persons are in fact equally irresponsible one is to be divorced because his type of insanity does not come within the rules, but the other is to have a defence because his case is covered by the rules."

Against at p. 1003 Lord Reid has posed two alternatives and observed:

"So it remains for me to choose between the two clear-cut alternatives either insanity is a defence or it is not. I think that ultimately the answer must depend on the meaning one gives to the word "cruel", and on this there are enviously two opinions, even among Judges."

Lord Reid thereafter referred to the decision in *Gollins*" case 1963 2 All Er 966 and pointed out that whether the behaviour is cruel or not must be considered from an objective standard. Lord Reid has also tried to assimilate the position of an insane person to that of an abnormal person and pointed out that it is illogical to make a distinction between the behaviour of an abnormal person and that of an insane person. From the point of view of the consequence on the spouse the impact of both is the same. At p. 1004 Lord Reid has observed;

"In my judgment decree should be pronounced against such an abnormal person not because his conduct was aimed at his wife, nor because he must be deemed to have foreseen or intended the harm he did, but simply because the facts are such that after making all allowances for his disabilities and for the temperaments of both parties, it must be held that the character and gravity of his acts was such as to amount to cruelty. And, if that is right for an abnormal person, I see no good reason why the same should not apply to an insane person."

Lord Evershed in his concurring judgment pointed out that it is not enough to say that the second part of McNaghten rule did not apply to the facts of that case, because the arguments inevitably raised the general and important question viz., to what extent is insanity an answer to a plea of cruelty in a petition for divorce.? After posing the question in that general form, Lord Evershed conceded that it cannot be laid down that the test of judging cruelty in all cases is purely objective. Lord Evershed proceeded to observe that proof of insanity is not necessary an answer to the charge. He then referred to the point of view of the sufferer and considered the necessity to give protection to the suffering spouse. Lord Pearce pointed out that the divorce Court has more similarity to the common law Courts than to the criminal Courts. He was not prepared to accept the argument that divorce was partly punitive and, therefore, we must look to the criminal law for guidance. He then emphasized that in considering the question as to whether insanity afforded a defence, one should look to the meaning of the word "cruelty". After referring to the cases in which the objective view of cruelty was emphasized, Lord Pearce

emphasized the hardships to which one party is subjected by the distinction between the two parts of the McNaghten rules. Lord Pearce then observed: (At p. 1028).

"The argument for holding that a man should not be held to have treated his wife with cruelty if he did not know what he was doing has an attractive simplicity. But so to hold would create a dividing line which in practice is not easy to apply (even with medical help), which will at times make the Courts powerless to help when help is most needed, and which will cause more hardship than it alleviates. It is not the dividing line which has been drawn in criminal cases, nor is it that which has been drawn in cases of contract. It is that which has, after much doubt, been drawn in cases of tort. For divorce cases it has little practical justification..

And inevitably it must be so if the Court is to exercise its duty of protection between spouses who are otherwise under a duty to live with one another"

Lord Pearce then concluded with the following observations: (At p. 1029).

"In my opinion insanity should, like temperament, and other circumstances, be one of the factors that may be taken into account in deciding whether a wife is entitled to relief. Where therefore, the conduct in question is such that it would not amount to cruelty in the absence of an actual intention to hurt, an insane man who could form no such intention would not be held to have treated his wife with cruelty. Where, however the conduct would be held to be cruelty regardless of motive or intention to be cruel, insanity should not bar relief."

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 the 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 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 schizophrenia 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. There is no knowing when the husband would relapse into a fit of schizophrenia, in which case anything may happen. The apprehensions entertained by the wife are, therefore, well founded.

(13) The result is, the appeal fails and is therefore, dismissed. No order as to costs.

(14) Appeal dismissed.