

CASE COMMENT

N.G. DASTANE V. S. DASTANE: PROMINENCE TO SET PRECEDENT TO USE CRUELTY FOR DIVORCE

by

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Introduction

Divorce under Hindu Law since forever and day, has been considered to be obscure and is construed as an insoluble association with respect to a couple. Divorce was recognised under the Hindu Marriage Act, 1955 mainly associating with fault theory. The concept of divorce puts a marriage to the end where the spouses are relieved of their marital obligations and are free to part ways. Section 13 of the HMA¹ lists the grounds of divorce including the fault ground. Cruelty, now a ground of divorce under this, was not recognised before 1976 and was only added by the Amendment Act. Cruelty in laymen terms is the conduct of spouses with respect to their marital duties and obligations and one that is adversely straying from it. In a case of cruelty, it is important to peruse the Court's considerations with regards to what amounts to cruelty, in what cases cruelty can be granted for divorce and judicial separation, what is considered to be an act for condonation of cruelty, or even whether a single act of cruelty amounts to cruelty. These issues are what determines grounds for divorce, which are further elucidated transparently in a Supreme Court judgement *Narayan Ganesh Dastane v. Sucheta Narayan Dastane*².

Facts

In the case of *Dastane v. Dastane*, the appellant Mr. Narayan Ganesh Dastane was a well-educated, qualified man, who married Mrs. Sucheta, the respondent, a learned woman whose father works in the Ministry of the Government of India. Their marriage got arranged by their parents in April 1956, prior to which the respondent's father sent letters to the Appellant, to provide details about how she had a sunstroke which affected her mind, but then recovered from a Mental Hospital, which he urged to verify. The father said that he wanted to state on the

¹ The Hindu Marriage Act, No. 25 of 1955, INDIA CODE (1955), §13.

² *Narayan Ganesh Dastane v. Sucheta Narayan Dastane*, AIR 1975 1534 (INDIA).

outset that he wanted to disclose details, so the appellant knew her history before marriage. The couple lived together, and in the duration of three years, had two children. In January 1961, the appellant urged the respondent to get examined by a psychiatrist, but she did not cooperate because according to her, the husband was concocting a case of unsound mind. The couple refused to live together, at the time when the respondent was three months pregnant. During their time away, the husband made constant contact with the Police seeking security because he feared his life was in danger due to the respondent and her relatives. Every occasion they faced, only created more animosity between them and boosted the appellant's urge to seek police protection.

Proceeding this, the respondent drafted a letter to the Secretary of the Ministry stating that the appellant left her and treated her with uncommon cruelty. She moved the government to seek maintenance for her and her children and her declarations were recorded. The appellant on December 15, 1961, informed the respondent's father about moving to court to seek a judicial separation. Proceedings in the Trial Court were initiated on February 19, 1962, where he sought that his consent was obtained by fraud and thus refuted his marriage. The Trial Court held that the wife is guilty of cruelty, but it rejected the arguments with regard to consent by fraud and unsoundness of mind. The case moved to the District Court and on Second appeal moved to the Bombay High Court which granted a special leave petition to appeal to the appellant on whether the grant of judicial separation on the ground of cruelty is correct.

Issues

The appellant in this case sought for an annulment of his marriage, but alternatively proposed for divorce or judicial separation. The annulment was sought on the ground of consent by fraud, divorce was on based on the unsoundness of mind, and judicial separation on the ground of cruelty. The court recognized three main issues in this case:

1. Whether the burden of proof in the case of cruelty lies on the petitioner
 - a. What was the standard of proof in such cases?
2. Whether the facts have to be established beyond reasonable doubt in the case of civil (matrimonial) matters.
3. Whether the act of sexual intercourse amounts to condonation of cruelty.
 - a. What constitutes as cruelty?
 - b. Whether a single act of cruelty can constitute as cruelty.

These issues have to be addressed to understand whether this judgement stand the test of time, and to ascertain if the court's reasoning to state that the standard of proof is not beyond reasonable doubt is valid. Along with that, the issue of whether sexual intercourse amounts to cruelty is pertinent to understand because of the future implications of such a judgement.

Arguments Advanced

Arguments by Appellant

One of the main arguments led by the appellant was that his consent for marriage was obtained in a fraudulent manner. The respondent tried to make a case of unsoundness of mind by stating that the respondent was treated at the Mental Hospital for Schizophrenia, but that the respondent's father misled her state of psychological well-being to obtain his assent for the marriage. The appellant claimed that the respondent would lose her common demeanour and would gain temper and proceed to insult the appellant, his family and people and commonly apologize later. He further contended that the respondent would describe his mother as a boorish woman and on the day of "Paksha" she would abuse his ancestors. Further, she beat up her daughter when she had a high temperature and, on many occasions, would switch on the light at midnight and constantly nagged him, which led to him prostrating himself.

Arguments by Respondent

The respondent set out her contestations through various letters stating that she was terrorized by the appellant. The appellant did not fulfil the conditions set in Section 23 (1) and was abusing his own wrong by mentioning that she was an endlessly unbendable standard of lead. The appellant endorsed the act of cruelty by having sexual relations with her at the time of her pregnancy and the proceeding to leave their wrecked home. The respondent argued that the husband had provided a specific set of instructions that she was expected to follow. Some of them comprised of the respondent having to not fill the milk vessel or ant container to the brim, not to serve food in brass plates cups and vessels, not to do any work with one hand, not constantly ask her what he wants in the middle of meals. He further stated that she had to apply kajal and give him tomato juice, and on waking up in the morning to look after their child and most of all not talk too much.

Analysis

In this case, the Supreme Court of India held that the appellant's argument with respect to the unsoundness of mind of the respondent was fabricated by him as a means to obtain divorce. While the contention of him being subjected to cruelty was proved to exist under Section 10 (1) (b) of the HMA, the appellant's continuous acts of having sexual intercourse proves his condonation toward the cruelty. Moreover, the respondent was willing to return to the household they shared and admitted to her mistakes. The respondent did not make further grave acts after the condonation by the appellant and therefore, the Court held that though the wife was guilty of cruelty, the husband's act of condonation does not allow a divorce petition to be granted to him.

Burden of proof can be referred to as which party is responsible to prove the allegations put forward, and its application specifically toward matrimonial cases imply the preponderance of the evidence. In the case, the Court said that in a matrimonial case, the burden of proof must lie on the petitioner in accordance with HMA. Further, the burden lies on the petitioner based on the principle that the burden lies on the party which affirms a case, and not the one who denies it, as pointed out in *P. Mohandas Panicker v. K.K. Dakshayani*³. Once it is established that the burden of proof is on the petitioner, it is important that the court ascertain to what extent must the fact be proven, or in other words, what is the standard of proof to be determined in such a case. Generally, in civil cases, the rule is that a fact is said to have been established if it is proved by a preponderance of probabilities. To analyse this, it is imperative to understand the English position with regards to the standard required in divorce proceedings. Since the inception of time, Marriage is regarded as a sacred institution, and that in order to dissolve the marriage it must go through the Parliament. Over time, the standard of proof in divorce proceedings reduced, but was brought up under the court of appeal stating that when divorce is sought on the ground of cruelty, it must be proved beyond reasonable doubt. The Court in *Davis v. Davis*⁴ held that it had to be 'satisfied' on the evidence that the case had been proved. Lord Denning delivered his judgement by drawing a clear distinction between the standard of proof in civil proceedings and criminal proceedings and proclaimed that the standard of proof is on the basis of facts, whereas Lord Bucknill delivered the judgement by applying the rule of proof beyond reasonable doubt. In another case, which was also referred in the Dastane case, *Blyth v. Blyth*⁵, the House of Lords applied the standard of proof on a preponderance of probabilities to a case with regards to condonation. The English law stands unclear on what the

³P. Mohandas Panicker v. K.K. Dakshayani Mat.Appeal.No. 15 of 2006.

⁴ *Davis v. Davis* , [1950] 1 All ER 40.

⁵ *Blyth v. Blyth* [1966] 1 A.E.R. 534.

standard of proof required. With respect to the position in India, the Supreme Court in the case of *Bipin Chandra v. Prabhavati*⁶ recognised that the rule for standard of proof was that it had to be beyond the reasonable doubt for matrimonial proceedings. Section 14 of Indian Divorce Act, 1869⁷ specified the term ‘satisfied’, where the court interpreted it to mean beyond reasonable doubt and that the standard of proof is similar to criminal proceedings because every decree of divorce has a grave consequence⁸. However, in the *Dastane* case, Justice Y.V Chandrachud, without any reference to Section 23 of HMA⁹, held that term ‘satisfied’ is based on the preponderance of possibilities and thus the standard of proof under divorce proceedings is the same under civil proceedings. The contention with this interpretation of the court is whether this decision is a good law or whether it is per incuriam. A judgement is said to be per incuriam if a court’s interpretation of a law is inconsistent with the decisions made earlier by a co-equal bench of the same court¹⁰. This case will be considered per incuriam because it failed to consider the previous decisions on the same issue and can thus be ignored by courts. In a case which followed *Dastane*, *Saroj Kumar v. Kalyan Kanta*¹¹, the Court held that the prior decisions were no longer applicable.

The second issue is with respect to cruelty, what amounts to cruelty, whether this case constitutes cruelty and what is the effect of condonation of cruelty. Cruelty in general terms refers to the pain and distress inflicted on others which affects the physical, mental and economical psyche of such person. Cruelty was only added after the Amendment Act, 1976 where it was held as a ground for judicial separation. The subclause (i-a) in Section 13 was added to state that cruelty was also a ground for divorce and was upheld in the *Dastane* case. Cruelty on the grounds of judicial separation is provided under Section 10 (1) (b)¹² which states that the court can grant a decree of judicial separation on the ground that the treatment of one party which causes a reasonable apprehension in the mind of the other party for them to believe that it is injurious and harmful for them to live together. Similarly, cruelty as a ground for divorce is defined under Section 13 (1) (1-a)¹³ where if either party presents a petition for the dissolution of marriage by way of divorce, and has treated the petitioner with cruelty, such

⁶ *Bipin Chandra v. Prabhavati* AIR 1955 MB 103 (INDIA).

⁷ The Indian Divorce Act, No. 4 of 1869, INDIA CODE (1869), §14.

⁸ *John Ehite v. Kathleen Olive White* AIR 1958 SC 441 (INDIA).

⁹ The Hindu Marriage Act, No. 25 of 1955, INDIA CODE (1955), §23.

¹⁰ *Shyamkrishna Balganes and K. Vivek Reddy*, The Standard of Proof Required in Divorce Proceedings: An Unresolved Controversy, JOURNAL OF THE INDIAN LAW INSTITUTE, Vol. 44, No. 3, pp. 413-429 (2002)

¹¹ *Saroj Kumar v. Kalyan Kanta* AIR 1980 Cal 374 (INDIA).

¹² The Hindu Marriage Act, No. 25 of 1955, INDIA CODE (1955), §10 (1)(b).

¹³ The Hindu Marriage Act, No. 25 of 1955, INDIA CODE (1955), §13 (1) (1a).

petition may be granted. What amounts to cruelty can be subjective and depend on the facts and circumstances of the case, but certain conduct such as unsoundness of mind, attempt to commit suicide, making false allegations, refusal to have sexual intercourse and defamation, can amount to cruelty and can obtain a divorce. However, there are certain exception for the rule of cruelty. Section 23 (1)¹⁴ gives that if any party after filing a petition for divorce, does any act that can amount to the condonation of cruelty, such a petition may be cancelled. Another provision is the foundation of love and affection test under Section 23 (2)¹⁵, where the courts consider whether the marriage between the parties can be retrieved and reconciled. In this case, the court drew that the High Court mistakenly explored proof and instead of drawing a conclusion, estimated conditions. The Supreme Court went to the extent of considering proof by itself. The court rejects the defences of cruelty by the respondent stating that her acts cannot be constituted as self-defence against the appellant's act and is cooked only after the occurrence of the incident for the purposes of an argument in court. In *Kalejsky v. Kalejsky*, the court holds that the door of cruelty is opened too wide. The SC here, on the contrary, opines that if in this case the court does not take the wife's act to amount to cruelty, the door of cruelty is closed. This can also be interpreted in the way, that in the year of 1975, the court took into consideration that even a husband can be subjected to cruelty and is therefore progressive in that nature. The court held that "the conduct of the respondent clearly amounts to cruelty within the meaning of Section 10 (1) (b) of the Act". On the issue of condonation, both the Trial Court and High Court omitted the consideration of condonation. The SC picked this issue up and stated that a condonation was implicit by the act of the husband having sexual intercourse with the respondent and through their act of co-habitation. It was more than a circumstantial incident and the condonation was strong and satisfactory because the act implied forgiveness and restoration. The Court was right to infer that the act of sexual intercourse constituted condonation because the appellant and respondent resumed co-habitation upon the denial of divorce petition.

Conclusion

The Court's decision to a very large extent acts progressive because it applies rules specific to the facts of the case, instead of considering a prudent man's perspective of a Hindu perspective. It not only recognizes cruelty by women at that period of time, but also proves how the lower courts omit certain instances and further takes evidence into its own hands. Though aspects

¹⁴ The Hindu Marriage Act, No. 25 of 1955, INDIA CODE (1955), §23(1).

¹⁵ The Hindu Marriage Act, No. 25 of 1955, INDIA CODE (1955), §23 (2).

such as the standard of proof may not stand the test of time, this judgement sets precedent for how a Court should analyse a case.



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