

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-4142-2013 (O&M)
Reserved on : 06.02.2025
Date of Decision: 14.02.2025

RANBIR SINGH

...Appellant

Versus

SMT. RENU

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Ms. Simi Kandra, Advocate (as Legal Aid Counsel)
for the appellant.

Mr. Sparsh Chhibber, Amicus Curiae
for the respondent.

HARSH BUNGER, J.

Appellant-husband (Ranbir Singh) has come up in this appeal against the judgment and decree dated 16.07.2013 passed by the learned District Judge, Family Court, Sonapat, whereby the petition filed by him under Section 13 of the Hindu Marriage Act, 1955 (in short '*the 1955 Act*') seeking dissolution of marriage by a decree of divorce, has been dismissed.

2. Succinctly, the marriage of appellant-Ranbir Singh was solemnized with respondent-Renu on 21.02.2003 at Modi Nagar (Uttar Pradesh) as per Hindu rites and ceremonies. Out of this wedlock, a son and a daughter were born.

3. It transpires that on account of matrimonial issues, the appellant filed a petition under Section 13 of the 1955 Act, seeking divorce from the

respondent. The pleaded case of the appellant-husband in the divorce petition was that the respondent-wife is a quarrelsome lady and she was not happy with this marriage as she had studied upto 12th standard, whereas the appellant-husband was only 8th Class pass. It was stated that the difference of education between the parties was a bone of contention and respondent always remained indifferent. It was further pleaded that the appellant was an employee in a factory and was earning about Rs.3,000/- to Rs.4,000/- p.m. and said income was never considered sufficient by the respondent and remained un-satisfied with the same. Respondent was also not satisfied with the upbringing of the children. It was categorically stated that the respondent wanted to break the relationship but the children were the hindrance and therefore, she killed both the children and she was convicted under Section 302 of the Indian Penal Code and sentenced to undergo life imprisonment vide judgment dated 30.07.2011 passed by the learned Additional Sessions Judge, Sonapat.

3.1 It was also stated that the respondent threatened the appellant a number of times to kill him but she did not find a chance and therefore, the appellant was subjected to great mental tension and agony.

3.2 In this backdrop, the divorce petition was filed by appellant.

4. On the other hand, the respondent contested the afore-said divorce petition, *inter alia*, on the plea that it is the appellant who is quarrelsome and greedy by nature. It was stated that it is the appellant who treated the respondent with cruelty and he was also addicted to liquor. It was further stated that the respondent had not killed her children and a false case has been registered against her. It was also stated that an appeal against the judgment of conviction was pending.

4.1 With the afore-said submissions, the respondent sought dismissal of the divorce petition.

5. On the basis of the pleadings of the parties, the following issues were framed:-

“1. Whether the petitioner is entitled to a decree of divorce under Section 13 of Hindu Marriage Act, 1955 on the ground mentioned in the petition ? OPP

2. Whether the petition is not maintainable in the present form?OPR

3. Relief.”

6. In order to prove his case, the appellant appeared as PW-1 and examined another witness namely, Smt. Anju as PW-2. The appellant submitted a copy of judgment of conviction of respondent in evidence as Ex. PW1/B.

7. On the other hand, the respondent herself appeared as RW-1.

8. After considering the pleadings of the parties and also the evidence available on the record, the learned District Judge, Family Court, Sonapat vide impugned judgment and decree dated 16.07.2013, dismissed the divorce petition.

9. A perusal of the impugned judgment would show that the District Judge, Family Court, Sonapat recorded the following findings, while dismissing the divorce petition:-

“11. After giving my thoughtful consideration to the rival contentions and appreciating the entire evidence adduced in the case, I am of the considered opinion that the petitioner has failed to prove the ground of cruelty. A perusal of the divorce petition goes to show that allegations of cruelty made therein are quite vague and indefinite. No specific instances of cruelty have been given. The general and sweeping type of allegations do not make out cruelty. If a wife insisted upon the husband to

earn sufficiently to maintain her and the children, she does no wrong. The normal wear and tear of the married life also does not constitute cruelty. The Hon'ble Rajasthan High Court in Smt. Bhavna Sharma Versus Devendra Kumar Sharma, reported as 2008(1) Latest Judicial reports, 74, held that normal wear and tear of married life does not amount to cruelty. In the present case, the self serving statement of the petitioner and that of the sister of the respondent do not prove cruelty in the absence of specific instances. The factum of conviction of the respondent can also not be taken into consideration as she has already preferred an appeal before the Hon'ble High Court which is pending decision.

12. In view of the above discussion, it is held that the petitioner has failed to prove that he was treated with cruelty, mental or physical by the respondent. Accordingly, this issue is decided against the petitioner and in favour of the respondent.”

10. Learned counsel for the appellant submits that the learned trial Court has erred in law and facts in dismissing the divorce petition filed by the appellant by way of passing a non-speaking judgment. It is submitted that the trial Court has recorded the findings by ignoring the oral and documentary evidence and also the facts available on the record. Learned counsel for the appellant submits that the respondent had been convicted for the murder of their children, and the same amounts to mental cruelty to the appellant as it has resulted in not only deprivation of conjugal rights but has also caused apprehension in the mind of the appellant that it would be unsafe to live with such a person of criminal nature. It is contended that there is sufficient evidence on record to prove cruelty on the part of the respondent; however the same has been ignored. Therefore, it is prayed that the findings returned by the trial Court are un-sustainable in the eyes of law and the same may be set aside. It is further prayed that the divorce petition filed by the

appellant may be allowed and decree of divorce dissolving the marriage between the appellant and the respondent, may be passed.

11. Per contra, learned counsel for the respondent has opposed the contentions/submissions made on behalf of the appellant by submitting that the trial Court has duly considered and appreciated the facts, pleadings as well as the evidence available on the record, in its right perspective. It is submitted that the trial Court has considered the relevant facts/events touching the entire matrimonial life of the parties and has rightly dismissed the divorce petition filed by the appellant-husband. It is also submitted that there is no illegality or perversity in the impugned judgment, which may call for any interference by this Court.

11.1 With the afore-said submissions, learned counsel for the respondent prayed for dismissal of the appeal.

12. We have heard learned counsel for the parties and perused the paper-book as well as the impugned judgment, with their able assistance.

13. The seminal question that has to be addressed is “*Whether conviction of a respondent for the offence of murder and sentence of life imprisonment amounts to cruelty.*”

14. Before considering the case in hand, it would be desirable to refer to a few judicial pronouncements.

14.1 In ***Sunita Devi v. Om Prakash 174 (2010) DLT 471***, the Delhi High Court took note of the judgment of conviction passed during the pendency of the appeal to grant the decree of divorce to the wife, who was convicted under Section 302 of the Indian Penal Code and was sentenced to life imprisonment.

14.2 In the case of *Savitri Pandey v. Prem Chandra Pandey (2002) 2 SCC 73*, Hon'ble the Apex Court has observed that there may be cases where on facts it is found that the marriage has become dead on account of contributory acts of commission and omission of the parties, no useful purpose would be served by keeping such marriage alive. The Apex Court, in this judgment, has examined the cruelty for grant of divorce under Section 13(1) (i-a) of the Act and held as under:-

"6. Treating the petitioner with cruelty is a ground for divorce under Section 13(1)(i-a) of the Act. Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, suffering or to have injured health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other. In the instant case both the trial court as well as the High Court have found on facts that the wife had failed to prove the allegations of cruelty attributed to the respondent. Concurrent findings of fact arrived at by the courts cannot be disturbed by this Court in exercise of powers under Article 136 of the Constitution of

India. Otherwise also the averments made in the petition and the evidence led in support thereof clearly shows that the allegations, even if held to have been proved, would only show the sensitivity of the appellant with respect to the conduct of the respondent which cannot be termed more than ordinary wear and tear of the family life."

14.3 In ***Vimla Bai v. Panchu Lal, AIR 2007 Rajasthan 99***, the wife was involved in a murder case, which was held to be cruelty by the Rajasthan High Court to grant divorce to the husband. Relevant portion of the said judgment is reproduced hereunder:

"11. Cruelty as a ground of divorce under Section 13(1)(ia) is a conduct of such type that the husband could not reasonably be expected to live with the wife. In our opinion, involvement of the appellant wife in a murder case amounts to cruelty and learned Family Court has rightly granted decree of divorce. We find no infirmity in the impugned judgment and decree."

14.4 In ***Mohanan v. Thankamani, ILR 1995 (1) Kerala 83*** the wife was convicted for the offence of murder of two minor children, which was held to be sufficient to constitute cruelty to dissolve the marriage between the parties by the Kerala High Court. The relevant portion of the said judgment is reproduced hereunder: -

"2 Even a single act of violence which is of grievous and inexcusable in nature satisfies the test of cruelty. The allegation that the respondent had killed her children is not a matter to be trifled with, in the petition itself the allegation that the respondent had killed her children is specifically stated. Conviction by the Sessions Judge against the respondent under Section 302 of the Indian Penal Code is not a matter in dispute. Pendency of the appeal is not a mitigating factor. Eventual acquittal in the criminal case would not be sufficient to assuage the embittered feelings of the father (appellant). The single act

of violence against the children establishes the cruel conduct of the respondent. Even if it is assumed that the respondent had not treated the appellant with cruelty the crime perpetrated against the children would certainly amount to cruelty to him also"

15. Keeping in view the aforesaid judicial pronouncements, let us examine the case in hand.

16. In the instant case, concededly, respondent-Renu has been convicted under Section 302 of the Indian Penal Code and has been sentenced to undergo life imprisonment vide judgment dated 30.07.2011 (Ex. PW-1/B). It is also not disputed that the sentence of the respondent was suspended vide order dated 26.08.2019 passed by this Court in **CRM-20123-2019** in **CRA-D-821-DB-2011** titled as **Renu vs State of Haryana**, after she had undergone actual sentence of 08 years 10 months and 23 days out of life imprisonment.

16.1 Although the conviction of a person for murder has not been specifically made a ground for divorce under the Hindu Marriage Act, but it would definitely amount to mental cruelty as the incarceration on account of conviction under Section 302 of the Indian Penal Code would surely result in deprivation of conjugal rights as well as food, shelter and security and would also cause mental pain, agony and apprehension in the mind of the other spouse that it would be harmful or injurious to live with the other. The afore-said view has been taken by the Delhi High Court in **Swati vs Arvind Mudgil, 2015(5) RCR (Civil) 827**.

17. In our considered view, the conviction of the respondent and sentence of life imprisonment under Section 302 of the Indian Penal Code for murder has caused mental pain, agony and apprehension in the mind of the appellant that it is not safe to live with the respondent and it clearly

amounts to “cruelty”. Further, on account of long incarceration spanning for nearly nine years resulted in physical deprivation of matrimonial relationship to the appellant. That apart, the appellant must have also borne the burden of humiliation in the society. The said cruelty would continue unless the relationship is severed and therefore, it would be in the interest of justice to dissolve the marriage by decree of divorce so as to put an end to the misery/suffering of the appellant and enable him to live his own life.

18. No other point has been raised.

19. In view of the above, the instant appeal is allowed. The impugned judgment and decree dated 16.07.2013 passed by the District Judge, Family Court, Sonapat is set aside. The marriage between the appellant and the respondent is hereby dissolved by a decree of divorce under Section 13(1)(ia) of the 1955 Act.

20. Decree sheet be prepared accordingly.

21. All pending applications (if any) shall also stand closed.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

February 14th, 2025

gurpreet

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No