

AFR
RESERVED

Court No. - 32

Case :- FIRST APPEAL No. - 296 of 2018

Appellant :- Sanjeev Gupta

Respondent :- Ritu Gupta

Counsel for Appellant :- In Person, Sanjeev Gupta

Counsel for Respondent :- Nitin Gupta

Hon'ble Shashi Kant Gupta, J.

Hon'ble Pradeep Kumar Srivastava, J.

(Delivered by Hon'ble Pradeep Kumar Srivastava, J.)

1. Heard the appellant Sanjeev Gupta in person, Sri Nitin Gupta, learned counsel for the respondent and perused the record.
2. This appeal has been preferred against the judgment and decree dated 29.03.2018, passed by Additional District Judge, Fast Track Court-II, Ghaziabad, in Case No. 2274 of 2013 (Ritu Gupta vs. Sanjeev Gupta), under Section 13(1) of the Hindu Marriage Act by which the petition for divorce filed by the respondent-petitioner has been decreed against the appellant-opposite party.
3. Brief facts of the case are that the respondent-petitioner filed a petition for divorce seeking divorce under Section 13(1) of the Hindu Marriage Act for dissolution of marriage dated 01.07.2012 between the parties. The respondent-petitioner has stated that both the parties married according to Hindu rituals and tradition on 01.07.2012 in *Arya Samaj Temple*, Aryanagar, Ghaziabad. A reception ceremony was also organized in Hotel Country-Inn, Sahibabad, Ghaziabad. The marriage was got registered on 02.07.2012 before the Sub-Registrar, Ghaziabad. Enough dowry was given in the marriage and enough expenses were incurred by the father of the respondent-petitioner. Prior to marriage with the opposite party, she was married with one Omkar Chawala from whom, two children were born. The elder one

is son Ekansh and the younger one is daughter Khushi. On 14.06.2011, in a road accident, her husband Omkar Chawala died and thereafter on 01.07.2012, the marriage between the parties took place. Prior to marriage, appellant-opposite party was married with one Priyambada but the marriage was dissolved by a decree of divorce. The respondent-petitioner, prior to marriage with appellant-opposite party had told that she has two children and if he accepts them, only then she will enter into marriage. In the beginning, he did not agree to it and she denied to marry but thereafter, he took her into confidence that he will accept both of her children. He got both the children admitted in The British School at Chandigarh and she believed that he has accepted her both children. After the end of the reception of the marriage, both stayed in a room of the same hotel and in another room, the father of appellant-opposite party and his friend Sonaria stayed. His father took her gifts and ornaments in the pretence of keeping them safe. The appellant-opposite party on the very first night of marriage behaved in a very cruel way and forced her for unnatural sex and made physical relationship with her in a very vulgar and inhuman way which was worse than animal. She started bleeding and felt enough pain. When she tried to alarm his father, he forcefully dragged her in the room. On 02.07.2012, after attending the marriage of her sister, both went to their room and again he attempted for unnatural sex and on being prevented, he committed *maar-peet* with her and said that she is characterless. The appellant-opposite party enjoyed making unnatural sex and on being refused, he got very angry and used to commit violence against her. He also complained that her father did not give any vehicle in dowry. When she told him that according to his status, her father spent money in her marriage and it was not possible for him to give a vehicle, again *maar-peet* was committed by him. On 03.07.2012, she told about this happening to her family members, they came to her house and in the

afternoon, she went to Ghaziabad to her parental house. His father also sided him. Due to his aforesaid behaviour, she refused to go to him. Thereupon, he came with his friends namely Sonaria and Manoj to her house and insisted for compromise. But she said that she will go with him only if he will not further commit unnatural sex with her nor he will commit cruelty with her. On 17.07.2012, the appellant-opposite party compromised before her family members accordingly and gave an affidavit which he brought with him after getting the same prepared in Faridabad, and therefore, she went with him. He took a house on rent in Surya Nagar, Ghaziabad and took her with children there but his behaviour did not change. He also made complaints about inadequate dowry and he insisted her to bring Rs. 40 lakhs for purchasing a house in Indrapuram, Ghaziabad. When she refused, the appellant-opposite party behaved in a very cruel way and on 06.08.2012, when she was sleeping with her son as he was suffering from fever, the appellant-opposite party came and started abusing her and forced for sexual relationship to which she refused. He forcefully made unnatural sex and threatened that if she will not do it, he will not leave her five years old daughter and will make relationship with her also. On 07.08.2012, the respondent-petitioner was in stomach pain and asked the appellant-opposite party to take her to hospital, but he refused. But when the pain increased, he took her to doctor where the doctor diagnosed to be stone pain. He became very angry at this and despite advice of the doctor that they should keep away from each other and she should take rest, he still forced her to do sex. On 13.08.2012, he went to his office and she suddenly came to know that his father has incurred injury and he has been admitted in hospital, where her mother was also admitted and operated on 10.08.2012. Since, no one was there to look after them, she went there and came back after two hours. When she informed him on phone about it, he started abusing her and started saying that

she is characterless as she went to meet her friend. It became too difficult to live with him in view of her physical and mental harassment and sexual exploitation and, therefore, she shifted to her parents house on 14.08.2012. Subsequently, she came to know that the appellant-opposite party had earlier also behaved in the like manner with her previous wife and, therefore, she took divorce from him.. When she came back to her parents house, he, in order to save himself, filed a complaint before the C.J.M., Ghaziabad, whereupon, she also lodged an FIR on 09.08.2013 for the offences under Sections 498A, 323, 504, 377 I.P.C. and Section 34 Dowry Prohibition Act. In view of his inhuman behaviour, it was not possible for her to live with him as her life was in danger, therefore, this petition was filed for divorce.

4. The written statement has been filed by the appellant-opposite party in which he, admitting the marriage, has stated that there is no cause of action available to the respondent-petitioner. She has not narrated the correct facts and has filed the petition on the wrong advice of her counsel and family members just to harass him. It has been concealed by her that she has filed an application under the Domestic Violence Act also and the appellant-opposite party has filed a petition for restitution of conjugal rights. He was a divorced man and for some happiness in life, he got prepared to marry with her. She was mother of two children. The marriage was consummated and they stayed for two days in Hotel Country-Inn, Sahibabad. In the age of 42 years, the purpose of the marriage for him was to accept her and two children and prior to marriage, he got the children admitted in a school in which 82,000/- was spent by him. On 03.07.2014, at the time of *Vidai Ceremony* from Ghaziabad to Chandigarh, he was misbehaved by her father, brothers and maternal uncle and she was not permitted to go with him. On 16.07.2012, he went to her with his father and family friend Sri P.R. Sonariya to convince her to come

with him to Chandigarh but again she misbehaved with them and a pressure was created and then on certain conditions, she was sent with him and his signature was obtained on a plain paper by way of undertaking. On 23.07.2012, he hired a house to live in Ghaziabad and he came back to Ghaziabad from Chandigarh on transfer and started living in rented house. All the payments were made by him and for purchase of furniture etc. his lakhs of rupees were spent. A new car was also purchased but she lived with him till 13.08.2012 and on that day Varun Sabbarwal came to his house with some unsocial elements and forced him to prepare papers for making the children of the respondent-petitioner to be his heirs and when he refused, the respondent-petitioner left the matrimonial house on 14.08.2012 and without his consent, she went to some unknown place and despite all efforts being made, she did not return. On 02.10.2012, she and her family members took with them all furniture and domestic articles with cash and ornaments and when asked by him, they started abusing and threatening him about which he lodged a complaint before the local police. But the police dropped the proceedings wrongly, therefore, he filed a complaint on 13.03.2013 before the Magistrate. Her family members persuaded for settlement and tried to convince him to withdraw the complaint. Then she filed a complaint before CAW, Delhi and also made a complaint in his office. Thereafter, other cases were also instituted between the parties.

5. In March, no marriage party took place and from his side, only three persons were present. Two rooms were taken on rent. Next day on 02.07.2014, the marriage of her younger sister was fixed. In their marriage, no money was spent nor any dowry was given as it was the second marriage of both. Prior to marriage, he was asked to get the children admitted in a school. On that day, her father asked to prepare the ownership paper for both the children about his property. When

he refused, much hue and cry took place there and she was not prepared to go with him to Chandigarh. The children were admitted in British School at Chandigarh and the fees were deposited by him. He never took her ornaments or *Stridhan*. She participated in the marriage of her younger sister in a very happy & healthy manner. On 09.08.2013, she was medically examined and nothing found happened against her. On her complaint when she and her maternal uncle gave statement, the allegation of unnatural sex and demand of dowry was not stated. Before CAW, Delhi, she alleged regarding the demand of car and subsequently, she changed her version to mean Fortuner Car, whereas, he has already a car and on her insistence, he purchased a Skoda Car. In addition to it, he has been provided his official car with driver. She also has a Sentro I-20 car from her earlier husband. It is wrong that on non fulfillment of demand of dowry, he used to beat her & children because he loved her children and wanted to do everything for their welfare. All the allegations with regard to her threatening to commit sexual offence to her daughter Khushi is incorrect and it is an allegation which is beyond the limit. When she was sick, he took her to Shanti Mukund Hospital and a stone was diagnosed in her urine pipe but her father refused to admit her in the hospital. She was provided treatment in Appolo Hospital by him where CT Scan etc. took place. Her allegations are out come of her ill thinking. When his mother-in-law was hospitalized for operation, like a good son-in-law, he went there and the test of his wife was also conducted there. On 14.08.2012, she left him under the influence of her family members and when he went to her to bring back, he was threatened by her parents. He wants to live with her and her children happily and wants her to return back, therefore, he had prayed that the divorce petition be dismissed.

6. Following issues were framed by the learned court below :-

1. *Whether on the basis of facts alleged in the*

petition, the marriage between the parties dated 01.07.2012 is liable to be dissolved?

2. *To what relief the petitioner is entitled?*

7. The respondent-petitioner has examined herself as PW-1 and the appellant-opposite party has examined himself as DW-1. Both the parties have also filed several documents in their favour.

8. After giving a thoughtful consideration to the arguments and evidence of the parties, the learned court below decreed the petition and granted divorce.

9. Aggrieved by the impugned judgment, this appeal has been filed. The appellant has challenged the impugned judgment on the ground that the evidence of the petitioner was contradictory which was ignored. Medical evidence was also ignored. The finding of unnatural sex is based on without any evidence. The solitary evidence was believed without further corroboration. The judgment of Kerala and Karnatak High Court was wrongly relied upon. Defective procedure was followed. Hence the appeal is liable to be allowed.

10. The learned court below has considered the grounds of divorce on three counts, namely, whether the husband made forcible unnatural sex with wife and he continued doing so after marriage, whether on being prevented she was beaten and was called characterless and whether he demanded 40 lacs rupees and car in dowry. There can be no doubt that forcible unnatural sex, beating, calling characterless and demanding dowry are different facets of cruelty. The case of the husband is of total denial of these allegations. Both have filed their affidavit in evidence and have been cross-examined by each other. In addition to it, both have filed a number of documents and most of them relate to undisputed facts.

11. For instance, the petitioner has filed five papers by the list 8c and 9c is a photograph of both parties, 10c is and 11c are their

marriage certificate. 12C is the affidavit of the OP dated 17.7.2012 as alleged by the petitioner in para 14. 13C is FIR of petitioner dated 9.8.2013 against OP for the offence under section 498-A/323/504/377 IPC. By list 8c, she has further filed 29c the copy of judgment in criminal revision no. 94/14 by which the revision of petitioner was allowed. 30C is the order on complaint made by OP passed CMM dated 6.8.2015.

12. During appeal, the respondent-opposite party has filed the judgment in 75/2016, State vs Sanjeev Gupta, case crime no. 331/13 under section 498-A, 323, 377 IPC and 4 Dowry Prohibition Act, PS. Link Road, Ghaziabad by which the appellant Sanjeev Gupta has been convicted and sentenced by Additional CJM, Court No. 8, Ghaziabad.

13. The defendant/appellant has filed copy of application given by plaintiff under Domestic Violence Act 63c/1 to 63c/11, affidavit 63c/12, list of witnesses 63c/13, list of document 63c/14, receipt with 41 papers, copy of application of plaintiff given before ACJM, Ghaziabad in 4316/15 u/s 498-A, 323, 504, 377 IPC & ¾ Dowry Prohibition Act and copy of application given to PS Linkroad, copy of her statement, her medical report, copy of application under RTI Act, copy of statement of Ritu Gupta, copy of rent deed, copy of order passed on FIR no. 253/11 u/s 279/304-A IPC PS Shahdara, marriage certificate, copy of case no 215/13 dated 11.3.2016, letter of Bharat Sanchar Nigam dated 17.6,2016, summon of NCW, copy of mutual fund, copy of RTI information, receipt of Shakti Mukund Hospital, copy of the order of High Court, Allahabad, copy of application dated 3.10.2016 given in 2274/13 and copy of order-sheet and the defendant has examined himself as DW-1.

14. The argument of the appellant is that there was no evidence of dowry demand or harassment or unnatural sex and the statement of

the respondent-petitioner (PW-1) on the point is contradictory and moreover, a criminal case for the offence of unnatural sex and dowry demand and harassment is still pending. Further argument is that medical report has been ignored and the court has relied upon the unsupported solitary statement of the plaintiff-wife by ignoring contradictions in her own testimony. Her relatives are in the business of property dealing and are engaged in cheating. The judgments of Kerala & Karnataka High Courts have been wrongly relied upon. There was material defect in the whole procedure.

15. The learned court below, after taking into consideration the rival contentions of both the parties, has formulated that the wife claimed divorce on the basis of cruelty and has examined the aspect of cruelty on three counts which are- **a.** that the husband made forcible unnatural sex with wife several times after marriage and committed mar-peat on refusal, **b.** that on refusal by wife for unnatural sex, the husband made allegation of her being characterless and threatened that if she refuses, he will not spare her 5 years old daughter and will make sexual relationship with her also, and **c.** the husband demanded 40 lacs and car in dowry after marriage.

16. The learned trial court went through the evidence on record and found that the petitioner-wife alleged and proved by her statement that on the first night after marriage, the defendant-husband committed unnatural sex on 1.7.2012 and 2.7.2012 and on her refusal he did mar-peat with her, whereupon, she went to her parents. On 17.7.2012, the defendant-husband came to her and regretted on his misdoings and apologized in writing through an affidavit and promised not to repeat and to keep her happy. He also stated that he has no doubt on her character. Believing on his promise, she came back to him. But his behaviour did not change and he started demanding 40 lacs in dowry to purchase a house and on small things,

he started making complaints about less dowry and beating and harassing her. On 6.8.2012, her son was suffering from fever and when she was with her son, the defendant-husband got very much annoyed and started abusing her. He pulled her to his room and despite her refusal, he made forcible unnatural sex and threatened her that if she did not do so he would not spare her 5 years old daughter and would make sexual relation with her also.

17. On 7.8.2012, there was stomach pain to her and on being asked to take her to doctor, he ignored. But when the pain became unbearable, he took her to hospital. On investigation, stone was found in her kidney and urinal track. She was advised to take rest and also avoid physical relationship. But having said so, the defendant-husband forced her by pulling and shaking her by neck to do oral sex by chewing his dirty private parts. She has stated that the defendant-husband enjoys unnatural sex and on being refused by her, he got extremely annoyed and used to beat her. He demanded 40 lacs rupees and a car and on her showing inability, he had beaten her and his behaviour was very aggressive and rude. He started raising objection on giving food to her children and also started beating them frequently. Later on she came to know that he used to behave in like manner with her ex-wife Priyamvada, demanded dowry and physically tortured her and because of that she took divorce from her. On 13.8.2012, her father got injured and hospitalized. Her mother was already admitted in the same Shanti Mukund Hospital. She went to see them and came back in two hours. When she informed him on phone, he started abusing her and made allegations of characterlessness and also said that she had gone to meet her friend.

18. No cross-examination has been specifically conducted by the defendant-husband on the point of unnatural sex and allegation of her being characterless except that he has tried to contradict her with

reference to her reply in respect of his complaint where she did not allege any dowry demand and unnatural sex. The plaintiff-wife gave a sober and genuine reason by stating that she made a complaint in respect thereof, but, the police officials said that it is possible that the situation may improve, therefore, such serious allegation should not be written and as such, expecting possibility of some settlement, she diluted the same. But this fact finds mention that after marriage, during their stay in Country Inn Hotel, she was mentally and physically harassed by her husband. It is pertinent to point out that, if she was not cross-examined on the material facts, it shall be assumed that those facts have been proved against him.

19. The argument of the appellant is that the fact of unnatural sex is not supported by any medical evidence and the medical/ pathology report which was conducted in respect of stomach pain, the report of which has been filed by the defendant-husband, does not support such allegation. The further argument is that the plaintiff-wife did not examine any witness in support. The learned court has rightly concluded that both the parties are husband and wife and all the matrimonial wrongs have been taken place inside the matrimonial home and within the knowledge of both only and therefore, independent evidence may not be possible. So far as medical evidence is concerned, the petition for divorce has been filed much after the date of incident of unnatural sex and sodomy and no medical report could support the same. Moreover, women in our country are modest by nature and their natural instinct is to conceal such thing because of natural shyness.

20. It needs specific mention that prior to filing of this petition for divorce, the plaintiff-wife lodged a FIR against the defendant-husband on 9.8.2013 in PS Linkroad, Ghaziabad, crime no. 331/13, for the offence under section 498-A/323/504/377 IPC & section 34

Dowry Prohibition Act and dowry demand, dowry harassment and unnatural sex was alleged against him and it was further alleged that on 9.8.2013, he came to her parent house. She was alone as her parents had gone to market. Despite her resistance, he committed sodomy on her. The police investigated the offence and submitted charge-sheet to the court for the offence under section 498-A/323/504/377 IPC & section 34 Dowry Prohibition Act. The appellant-husband was charged and tried and convicted and sentenced for the offence under section 498-A/323/377 IPC & section 34 Dowry Prohibition Act by Addl. CJM, Court No. 8, Ghaziabad by judgment dated 12.9.2018. During the hearing of this appeal, the respondent-wife has filed the copy of that judgment and a perusal thereof shows that four fact witnesses including the plaintiff-wife were examined in support of charge and the defendant-husband was held guilty for the offence of sodomy and unnatural sex. It has been submitted by the appellant that he has filed appeal against the said judgment which is pending. No order of the appellate court has been produced by the appellant to show that the said judgment of the trial court has been stayed. It needs to be pertinently mentioned that the standard of proof in a criminal case is much higher than a civil case as the guilt is expected to be proved beyond doubt and it is not decided on the basis of comparative probability. In any case the finding of the court in this petition in respect of dowry demand, dowry harassment and unnatural sex and sodomy stands further corroborated by the judgment in the criminal case.

21. In addition to being a criminal offence, act of sodomy and unnatural sex is also a marital wrong and is a ground for seeking divorce. It also amounts to cruelty which is another ground of divorce. Section 13 of the Hindu Marriage Act provides as follows:

“13. Divorce(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition

presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

(I-a) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality; or”

22. Cruelty has not been defined in the Hindu Marriage Act. In *Mayadevi vs. Jagdish Prasad, AIR 2007 SC 1426*, the Supreme Court has remarked that the expression 'cruelty' in Section 13 has been used in relation to human conduct or human behaviour in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the Court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the inquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per-se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be inquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

23. In *Anjula Verma vs. Sudhir Verma, AIR 2002 SC 1447*, the Supreme Court has remarked that the foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. In *Ravi Kumar vs Julmidevi, (2010) 4 SCC 476*, cruelty was interpreted to mean absence of mutual respect and understanding

between spouses which embitters relationship. As held in **Vishwanath Agrwal vs Sarla Vishwanath Agrwal, (2012) 7 SCC 288**, it always depends on social strata or milieu to which parties belong, their ways of life, relationship, temperaments and emotions that are conditioned by their social status. It was pointed out in **K S Srinivas Rao vs D. A. Deepa, (2013) 5 SCC 226**, that it is evident where one spouse so treats other and manifests such feeling which causes reasonable apprehension in the mind of other that it would be harmful or injurious to reside with other spouse. In **Gurubux Singh vs Harminder Kaur, AIR 2011 SC 114**, it was opined that isolated frictions on some occasion does not amount to cruelty. All quarrels must be weighed in determining cruelty in each particular case, keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple will probably have no occasion to go to Matrimonial Court.

24. The learned court below has placed reliance upon the decision in **Grace Jayamani vs E.P.Peter, AIR 1982 Kant. 46** and **Bini T. John vs Saji Kuruvila, AIR 1997 Ker. 217**. In both these judgments, it has been held that sexual intercourse against the order of the nature or sodomy or unnatural sex or oral sex is a marital wrong and a ground for dissolution of marriage. In **Bini T. John (supra)**, it was held:

“Sex plays an important role in matrimonial life. Therefore conduct of one among the parties towards the other in the matter of sex is an important factor in the married life. Insistence of unnatural sex, continued compulsion for oral sex, sex through anus causing pain and physical injury to make the wife to concede to such unnatural sex will certainly amount to cruelty.”

In laying down the above legal proposition, the court took support from the judgment of Karnataka High Court (supra).

25. The argument of the appellant is that the court wrongly relied upon the two judgments as they were not decided on the basis of the solitary testimony of the plaintiff-wife and other witnesses were also examined. But, what is relevant is the proposition of law which was clearly laid down by the Kerala High Court. So far as the need of corroboration by independent evidence is concerned, we are in agreement with the view taken by the Karnataka High Court that the standard of proof required in a matrimonial case is the same what is required in a civil case namely preponderance of probability. In that case, the wife claimed divorce as the husband was forcing her for sexual intercourse in unnatural way. The wife had stated before the trial court that against her wishes, the husband used to put his male organ into her mouth and used to put it into her anus. In the case before this Court also, the wife has stated the same thing. The Karnataka High Court held:

“That being so, we are satisfied that the respondent indulged in sodomy on his wife, the present petitioner, and that the petitioner has made out a case for a decree of divorce by dissolution of the marriage with the respondent. In the case of Lawson vs Lawson, 1955 (1) All ELR 341, it is laid down by Lord Goddard, CJ, in Court of Appeal that though we should normally expect corroboration to the testimony of an accomplice, since the wife is not a consenting party, she would not be in the position of an accomplice and her testimony could be accepted without corroboration, if it inspires confidence.”

26. In the case in hand the respondent-wife has stated that the husband made sexual relation against her wishes like a beast forcibly in a very brutal and cruel way against the order of nature several times and committed sodomy and unnatural sex. The appellant-husband did not put any question in her cross-examination nor made any suggestion of falsity on this point. Even in his written statement, he has expressed his denial only saying that all alleged grievances may not be possible in short span of only about 15 days. He has stated what has been done by him for the children of plaintiff-wife, for her or for her parents. In the above referred two judgments, the matter proceeded either ex-parte or the husband did not turn up to cross-examine the wife. Viewed from this angle, the appellant-husband is on worse footing as he had opportunity to cross-examine, but he did not cross-examine on the point of allegation of sodomy and unnatural sex. In his affidavit, the appellant-husband has written a lot about his wellness and goodness in terms of nature and economic status, what he did for the respondent-wife and her children and that even he went to see his mother-in-law when she was hospitalized. It has been also disclosed that he deposited the fee for the admission of the children but the same has been denied by the wife, saying that she paid him in cash and thereafter, he made payment by cheque. He has also disclosed that he has made some fixed deposit in the name of the children but admittedly the same has been done after the filing of the petition by wife. It is also pertinent to mention that he also filed a criminal case against the wife and there after the criminal case was filed by the wife against him and then this case was filed. In view of the fact that the appellant-husband has been convicted for the offence of unnatural sex, therefore, version of the wife in respect thereof is strengthened. Moreover, such thing cannot be a compensation for the act of unnatural sex.

27. It has been specifically stated by the respondent wife in her

petition as well as in her affidavit filed in evidence that the appellant-husband was earlier married with one Priyamvada who for similar reasons divorced her. On this point, the appellant-husband has been cross-examined, but he has given evasive reply and has not clarified the facts. He could have filed judgment of that divorce case, which must have been in his knowledge, but the same was not filed by him. This fact also supports the respondent-wife, so far as allegations of unnatural sex is concerned.

28. So far as the argument of the appellant-defendant is concerned that a wrong procedure was adopted by the learned court below does not appear to be correct, in view of the record. The fact that at the last stage after recording of the statement by the Family Court the case was transferred to another court and the court below immediately heard the arguments and reserved the case for judgment, cannot be taken to be extraordinary as after the recording of the statement the case was transferred on the basis of a letter of the Family Court, as it declined to hear the arguments as in the transfer application given by the appellant-husband certain allegations were made and thereafter the case was transferred by the District Judge to the court below.

29. We are in total agreement with the view taken by the Karnataka High Court and Kerala High Court as referred above. Unnatural sex, sodomy, oral sex and sex against the order of the nature, against the wishes of a women or wife or anybody is not only a criminal offence but also a marital wrong and amounts to cruelty which is a good ground for dissolution of marriage. Any such thing which brings the wife to indignity and causes physical and mental agony and pain is cruelty. Forcible sex, unnatural or natural, is an illegal intrusion in the privacy of the wife and amounts to cruelty against her.

30. On the basis of above discussion, we find that the approach adopted by the learned court below and the conclusion arrived at in the impugned judgment is sound and based on legal principle and

correct marshaling of the fact and evidence. We find no perversity and illegality in it. Hence, the appeal is liable to be dismissed and the impugned judgment is liable to be affirmed.

31. The appeal is **dismissed** and the judgment and decree dated 29.03.2018, passed by Additional District Judge, Fast Track Court-II, Ghaziabad, in Case No. 2274 of 2013 (Ritu Gupta vs. Sanjeev Gupta), under Section 13(1) of the Hindu Marriage Act is affirmed.

32. Lower court record be transmitted forthwith to the learned court below along with a copy of this judgment for information and necessary compliance.

Order Date :- 24.05.2019
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(Hon'ble Pradeep Kumar Srivastava,J.) (Hon'ble Shashi Kant Gupta,J.)