

**Grace Jayamani Vs. E.P. Peter**

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**Court :** Karnataka

**Decided On :** Jul-17-1981

**Reported in :** AIR1982Kant46; ILR1982KAR196

**Judge :** K. Bhimiah, ;G.N. Sabhahit and ;N.D. Venkatesh, JJ.

**Acts :** [Divorce Act, 1869](#) - Sections 7, 10 and 17

**Appeal No. :** Civil Referred Case No. 5 of 1980

**Appellant :** Grace Jayamani

**Respondent :** E.P. Peter

**Advocate for Pet/Ap. :** R.C. Castelino and ;J. Shanthakumari, Advs.

**Judgement :**

**Sabhahit, J.**

1. This reference under S. 17 of the Indian Divorce Act. 1869 is by the District Judge. Dakshina Kannada, Mangalore in Matrimonial Case No. 3 of 1979 on his file.

2. Smt. Grace Jayamani presented a petition to the District Judge. Dakshina Kannada. Mangalore. under S. 10 of the Indian Divorce Act for dissolution of the marriage of the petitioner with the respondent, Sri E. P. Peter and for grant of a

decree of divorce. She averred in the petition thus:

The petitioner and the respondent belong to Protestant Christian community and profess the said religion. They were married on 4-11-1971 at Shanthi Cathedral, Balmatta, Mangalore, according to the customs prevailing in their community. From the date of the marriage, according to the petitioner, her life with the respondent has been one of misery, brutality and cruelty. The Respondent, husband has been forcing her for sexual intercourse in an unnatural way. His treatment to her is one of brutality. Even when she was suffering from fever and even during the menstrual periods, respondent would not give her any respite with repeated acts of sex all through the night. Whenever she refused the demands in sexuality of the respondent, she was beaten. In the circumstances, she had no alternative except to approach the Court of the District Judge for judicial separation under S. 22 of the Act.

The Court granted the said relief in M. C. No. 3 of 1976 m 29-1-1977.

3. By an amendment, she has further averred in the petition that her husband has been inflicting sodomy on her in the sense that he has been forcing carnal copulation with her per anus and per os Thus, she prayed for a decree for divorce under S. 10 of the Act.

4. That petition was resisted by the respondent/husband. He denied generally all the averments made in the petition except that relating to the passing of decree for judicial separation in M. C No. 3 of 1976. He did not deny also his marriage with the petitioner. Therefore, the learned District Judge raised the following points as arising for his consideration:

- (i) Whether the provisions of the Act apply to the petitioner and the respondent?
- (ii) Whether the petitioner and the respondent reside or last resided together within the jurisdiction of this Court?
- (iii) Whether the petitioner has made out grounds under Section 10 of the Act for dissolution of her marriage with respondent?

(iv) Whether there is no collusion between the petitioner and respondent?

(v) Whether the petitioner is entitled to the decree of dissolution of her marriage with the respondent?

5. During the hearing, the petitioner examined herself as P. W. 1 and examined her father Wilfred Ammann as P. W. 2 and she got marked Exhibit P. 1, true copy of the Marriage Certificate and Exhibit P. 2. Certified copy of the order dated 29-1-1977 for judicial separation passed in M. C. No. 3/1976 by the District Judge, Dakshina Kannada. As against that, the respondent did not enter the Box nor did he examine any witness on his behalf. The learned District Judge assessing the evidence on record held on Point No. 1 that the provisions of the Act did apply to the parties as they profess Protestant Christian faith. He further held that the marriage was solemnised according to their religious rites. He also held that the parties were within the jurisdiction of that Court and on Point No. 3 he came to the conclusion that the respondent was guilty of sodomy and bestiality and. hence, he held that the petitioner made out a case for dissolution of marriage with the respondent. On Point No. 4 he found that there was no collusion between the parties and. in that view, he gave a decree in favour of the petitioner/wife for dissolution of the marriage and he has referred the order for dissolution of marriage for our confirmation.

6. Under S. 17 of the Act this Court is required to re-assess the evidence on record to satisfy itself that the findings given by the learned District Judge are satisfactory, being well-founded on the evidence on record. This Court has to further find out whether there is any collusion between the parties and whether the decree for dissolution of marriage could be confirmed.

7. The ground made out by the petitioner for dissolution of marriage in the petition is that her husband inflicted sodomy on her in the sense that he forced her for carnal copulation per anus and per os instead of in the normal way. There is no averment, however, regarding bestiality. The finding therefore given by the District Judge under Point No. 3 that the respondent/husband is also guilty of bestiality is without any pleading and evidence and the same cannot be sustained. Such a finding is clearly unwarranted.

8. The point, therefore, that arises for our consideration is- whether the evidence on record is sufficient to hold that the husband committed sodomy on his wife. For, under S. 10 of the Act, it is stated that wife may present a petition to the District Court or to the High Court for dissolution of marriage, inter alia on the grounds of rape, sodomy or bestiality. The ground made out by the petitioner for dissolution of the marriage is one of sodomy.

9. A doubt however arises whether the term 'sodomy', should necessarily mean that a man should have carnal copulation with a man only or whether it amounts to sodomy even if a man indulges in unnatural sex acts with a woman.

10. The early legislators, in keeping with the delicacy of the early writers on the English Common Law were reluctant to set out in detail the elements of sodomy because of its loathsome nature. They simply provided for the punishment of any person who committed 'Sodomy or the crime against nature'. Definition of the term is not included in the present Act obviously for the same reason as the Act was drafted and enacted as early as in the year 1869. That being so we have to necessarily look into the Dictionary meaning of the term 'Sodomy'.

11. The Shorter Oxford English Dictionary gives the meaning of the term 'Sodomy' thus:

'An unnatural form of sexual intercourse. esp. that of one male with another.'

Webster's Third New International Dictionary gives the meaning of the - term 'Sodomy' thus:

'Carnal copulation with a member of the same sex or with an animal: non coital carnal copulation with a member the opposite sex: specif: the penetration of the male organ into the mouth or anus of another'

Thus, it enlarges the meaning of the term 'Sodomy' to include non coital carnal copulation with a person of the other sex also. Halsbury's Laws of England, III Edition, Volume 10, under criminal law gives the meaning of Sodomy thus in Para 1281:

'1281. Sodomy. The offence of Sodomy can only be committed per anum (R. V. Jacobs (1817), Russ. & Ry. 331, C. C. R.) It may, be committed by a man upon a woman (R. v. Wiseman (1718) Fortes. Rep. 91: 1 Russel on Crime (10th Edn.) 846.) even . upon his own wife (R. V. Jellyman (1838). 8 C. & P. 604: Statham v. Statham, (1929) P. 131, C. A.;).'

Further in Jowitt's Dictionary of English Law. the term 'Sodomy, is described thus:

'Sodomy: unnatural sexual intercourse by a man whether with a man or a woman, so-called from Sodom (Gen. Xiii. 13). In the criminal law it is known as buggery.'

In American Jurisprudence, II Edition, Volume 70. Sodomy is dealt with by Emmanuel S. Tison; giving a general introduction to the term, the learned author writes:

'In most of the states, statutes have been enacted making sodomy a criminal offence, although considerable variation exists as to the wording of such statutes, and such variation accounts to a large extent for the differences in the decisions of the courts in the various jurisdictions as regards sodomy cases, the making of unnatural sexual relations a crime is embedded in the history of the common law and finds its sanction in the broader basis of the settled mores of our western civilisation and although there is a considerable body of opinion that as between willing adults, the question should be left to moral sanctions alone and eliminated from the criminal law, it has been held that such matter presents a legislative question and not one for the courts. At least one jurisdiction has amended its statute so as to require force or threat of force in order for an offence to be committed under its statute penalizing the crime of deviate sexual assault.

'Sodomy appears originally as part of the Hebraic law, taking its name from the practices reputedly indulged in by the inhabitants of the cities of Sodom and Gomorrah, but unfortunately, the Biblical text is not explicit about the various types of conduct for which these cities were visited with fire and brimstone, although other portions of the Old Testament prohibit sexual congress between man and man in general terms ('Though shall not lie with mankind, as with womankind: it is abomination.' Leviticus; 18:22).'

Thus it is evident that the term 'Sodomy', as it is understood currently in the Court for Divorce and Matrimonial cases in England, to which this Court shall conform as nearly as may be under the provision made in S. 7 of the Act, is non coital, carnal copulation with a member of the same or opposite sex, e. g., per

anus or per os. Thus a man may indulge in Sodomy even with his own wife. Taylor's Principles and Practice of Medical Jurisprudence, XII Edition, Volume II. also states thus in this behalf:

'Sodomy: It is a felony by the Sexual Offences Act. 1956 (Sect. 12) for a person to commit buggery with another person, which means the action of a male person attempting to obtain sexual gratification by means of the anus of a human being (sodomy) or with an animal (bestiality), whether per vaginam or per anum.'

Whether a husband can commit sodomy with his own wife was the subject matter of a decision in the case of B. v. B., 1882 Punjab Record 68. The question was referred to a Full Bench of the Punjab Chief Court as far back as 1882 and it was held therein that a husband could be guilty of sodomy on his wife if she was not a consenting party, and that this would afford the wife a valid ground to petition for dissolution of marriage. That lends support to the view we have taken. Thus we have to find out on the facts in the present case whether the husband indulged in carnal copulation with the petitioner per anum and per os, as alleged and has thus committed sodomy.

12. This court has ruled by a decision of the Special Bench, in Roland Premkumar Gokuldas v. Mrs. Jyotsna Gokuldas (ILR (1980) 2 Kant 1444), that the standard of proof expected in a matrimonial case under the Indian Divorce Act is what is required in a civil Proceeding, namely preponderance of probability and that, the analogies of criminal law are not apt in these cases.

13. The petitioner in her evidence has clearly stated thus:

'At the time of having sexual intercourse, the respondent used to put his male organ into my mouth or he used to put it into my anus. He was not prepared to have sexual intercourse in the usual way nor was he prepared to have sexual

intercourse at my desire in the usual way. He used to conduct with me in a very cruel way at the time of having intercourse. Therefore, it is impossible for me to live with the respondent. On account of modesty, I did not state about these facts during my examination on the last occasion. On these grounds, I pray for a decree for divorce.'

There is no cross-examination on the asseverations made by the lady in the box. By the very nature of things, it is not possible to expect corroboration to testimony before the court. Even so, she has reported the matter soon after to her father. She has examined her father as P. W. 2. He has in a general way corroborated the evidence of P. W. 1. the petitioner, when he stated thus :

'My son-in-law was troubling my daughter like anything. He was biting her breasts. He was beating her. My son-in-law i. e., the respdt. was forcing my daughter for sexual intercourse during menstrual period. He was coercing her even when she was ill. My daughter used to fall unconscious because of over indulgence on the part of respdt. in sexual intercourse. My daughter developed fear forbid on account of cruel attitude of the respdt. towards her ..... My son-in-law was behaving like a beast.'

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 for divorce by dissolution of the marriage with the respondent. In the case of *Lawson v. Lawson* ((1955) 1 All ER 341) it is laid down by Lord Goddard, C. J., 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. This is what he has observed:

' .....but in fact she was not a consenting party, and accordingly no rule for corroboration applied in the present case.....'

Hence, we have no hesitation to hold on the facts of the case that the learned District Judge was justified in coming to the conclusion that the husband in the case Committed sodomy on his wife by forcing her for carnal copulation per anus

and per os.

14. The conduct of the husband during the trial and the fact that the husband remained absent, though he filed objections, would make it clear that there is no collusion between the parties. We are satisfied with the finding of the learned District Judge that there is no collusion between the parties and we are further satisfied that the parties are Protestant Christians and reside in the jurisdiction of the Court.

15. In the result, the decree for dissolution of the marriage of the petitioner with the respondent is hereby confirmed.

16. Order accordingly.

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