Krishna Bhat Vs. Srimathi

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Court : Karnataka

Decided On : Jan-24-1995

Reported in : II(1995)DMC280; ILR1995KAR1494; 1995(2)KarLJ271

Judge : Krishna Moorthy and Mohan Kumar, JJ. ;

Acts : Hindu Marriage Act, 1955 - Sections 13

Appeal No. : M.F.A. No. 2376 of 1987

Appellant : Krishna Bhat

Respondent : Srimathi

Advocate for Def. : Udaya Holla, Adv.

Advocate for Pet/Ap. : Y.K. Narayana Sharma, Adv.

Disposition : Appeal allowed

Judgement :
ORDER

Mohan Kumar, J.

1. In this Appeal, the husband challenges the correctness of the judgment of the Court below in dismissing his application for divorce sought invoking Section 13(i)(iii) of the Hindu Marriage Act, The facts leading to the Appeal in brief are as

follows:

2. The marriage between the spouses took place on 14.3.1980. The husband alleges that he did not know the wife prior to the marriage, he being a resident in a far off place and since the alliance was mooted by a common relative. He saw the bride for the first time and for a brief period of few days prior to the marriage at her residence. The husband alleges that he consented to the marriage believing that the wife was a normal person. The marriage was thereafter held, at Uppinangady i.e., at the groom's place, instead of as usual at bride's place at the suggestion of the bride's parents. After the marriage they lived together in his house for about 2 or 3 days and during these days her behaviour was unusually calm. The husband believed that her conduct was so, because of the changed atmosphere; but he alleges that during this period she was showing disinclination to cohabit with him. It is alleged that during next few days they were visiting the houses of relatives and according to thehusband even then also the wife was showing disinclination to consummate the marriage and even evinced aversion to the same. It is further alleged that at about the end of April 1980 the wife suddenly began to develop peculiar and aggressive manner and she began to talk without coherence of thought and quite unconnected with the situation. According to the husband, on one or two occasions in April 1980 she attempted to run away from the house and she had to be brought back after using force. According to the husband, the wife used to abuse the members of his family without rhyme or reason and she stated that she did not want to get married and that she married out of coercion and force and had no inclination to have co-habitation and in fact she has aversion to the same. According to the husband, the wife is mentally unsound and also suffers from mental disorder. He further alleges that he was unaware of the mental condition of the wife and these facts were suppressed from him and his consent for the marriage was obtained by practising fraud. The husband sent for her brother Ramachandra Bhat intending to treat the wife hoping that the mental condition and attitude of the wife would change and accordingly on 19.5.1980 they took her to the Hospital at Manipal. There, a Lady Doctor examined her. According to the Doctor, the wife was mentally unsound and she had such attack of insanity for a period of not less than 5 years preceding the examination and the same can only be kept under control by continuous administration of drugs and that she will

not be completely cured. At this stage, it is alleged that the wife's brother offered to treat her and cure her illness and offered to take her to their house assuring the husband that after cure, she will be sent back. She was taken to their house. There was no response for sometime thereafter and as the husband was anxious to know her condition he went to her house twice. He found her condition had not improved at all. The husband has reason to believe that during the first few weeks of her stay in his house, she was under the influence of drugs and she was behaving in a calm and quiet manner, that as soon as the stock of the drugs exhausted, she reverted to her old abnormal behaviour of incoherent thought and violence. She is in an incurable state of mind suffering from fit of insanity and hence unable to fulfil her marital obligation. She has shown aversion to cohabit with the husband which amounts to impotency under law. Due to this and the mental condition it is notpossible for the husband to live with the respondent-wife. Hence the husband has sought for divorce.

3. The respondent-wife denied all the allegations and offered to go and live with the appellant. She expressed her willingness to discharge her marital obligation as a dutiful wife. She denied the allegation that she has any aversion for cohabitation. She further offered to be examined by a Doctor, to establish that she does not suffer from any illness as alleged by the appellant. She claimed that she is capable of consummating the marriage.

4. On appraisal of the evidence in this case, the trial Court held that the husband has not made out a case that the wife is incurably of unsound mind and further held that the husband has totally failed to establish that the wife is suffering from any of the ailments alleged by him. On these findings the petition for divorce was dismissed. Aggrieved the husband has come up in Appeal.

5. The question to be considered in the Appeal is whether the appellant has established the ingredients of Section 13(i)(iii) of the Hindu Marriage Act. To succeed in such a case the applying spouse should establish that the respondent is of incurably unsound mind or the applicant may lead such evidence as to show that the respondent suffers from mental disorder of a kind continuously or intermittently which establishes that the appellant cannot be reasonably expected

to live with the respondent. From the wordings of the Section it admits of no doubt that burden of proving of existence of sufficient degree of unsoundness of mind is entirely on the applicant. The standard of proof in such case is very high. Depending on the social set up of the parties and surroundings in which the parties live, the allegations can also be established by preponderance of evidence. In all such cases, the Court has to be satisfied regarding the allegation made and that it is not made recklessly. If on the basis of the cumulative effect of the evidence tendered, the Court comes to the conclusion that the respondent suffers from a 'mental disorder' of such a kind and to such an extent that the petitioner cannot be reasonably be expected to live with the respondent, then a decree for divorce can be granted. In other words, besides the respondent being afflicted with a 'mental disorder' the applying spouse has also to establish the requirement of the Section that the said affliction is to such an extent that it generatesa reasonable apprehension in the mind of the petitioner that the petitioner cannot live with the respondent. By means of Explanation added to Section 13(i)(iii) of the Act 'Mental disorder' has been defined to mean any mental disorder including schizophrenia.

6. Though in this case, the appellant has not pleaded specifically in his pleadings that the respondent is suffering from schizophrenia, it is clear from the evidence tendered on behalf of the appellant that the appellant seeks divorce on the ground that the respondent is suffering from schizophrenia. At this stage it may be apposite to refer to the following passage from the Decision of the Supreme Court in RAM NARAIN GUPTA v. SMT. RAMESHWARI GUPTA, : AIR 1988 SC2260 . The Supreme Court states thus:

The context in which the ideas of unsoundness of 'mind' and 'mental-disorder' occur in the Section as grounds for dissolution of a marriage, require the assessment of the degree of the 'mental-disorder'. Its degree must be such as that the spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognised as grounds for grant of decree. If the mere existence of any degree of mental abnormality could justify dissolution of a marriage few marriages would, indeed, survive in law.'

7. What is the degree of mental disorder a spouse suffers from which if shown to the Court, enables the applying spouse, a decree for divorce under Section 13(i)(iii) of the Hindu Marriage Act? Here again we may refer to the Decision reported in : AIR1982 Cal138 which Decision Their Lordships of the Supreme Court commented approvingly in : AIR 1988 SC2260 . The following is the passage of that Decision which we may notice:

'The High Court referred to and relied upon decision of the Calcutta High Court in Smt. Rita Roy v. Sitesh Chandra, : AIR1982 Cal138 Smt. Rita Roy v. Sitesh Chandra. In that case the Division Bench of the Calcutta Court observed:

'.....each case of schizophrenia has to be considered on its own merits.....'.....According to the aforesaid Clause (iii), two elements are

necessary to get a decree. The party concerned must be of unsound mind or intermittently suffering from schizophrenia or mental disorder. At the same time that disease must be of such a kind and of such an extent that the other party cannot reasonably be expected to live with her. So only one element of that clause is insufficient to grant a decree.'

Therefore it has to be shown that the respondent is suffering from mental disorder/schizophrenia and that the disease must be of such a kind and to such an extent that the appellant cannot reasonably be expected to live with her. With these yardsticks in mind we may examine the instant case.

8. Before proceeding further, we have to examine whether the appellant has established in this case as to whether the respondent suffers from schizophrenia at all. The consideration of other circumstances will arise only thereafter. Here again, before proceeding it will be useful to refer to the following passage from : AIR1975 Cal109 , Pronal Kumar Ghose vs Krishna Ghose, which refers to in brief the symptoms of a schizophrenia patient.

'In the text book of Psychiatry by Handerson and Gillespie (Tenth edition) at page 279, Schizophrenia has been described as an illness of slow, insidious on-set developing over years....The patient's relatives may report strange, odd, in-

appropriate behaviour, xxxxxxxxxxxxxxx Dr. A.K. Deb (D.W.4) in his book 'An Outline of Psychiatry' has dealt with this subject at page 73 of that book. According to that Doctor Schizophrenia usually starts about puberty and adolescence or shortly afterwards, xxxxxxxxxxxxxxxxx While dealing with the symptoms Dr. Deb mentioned some of them, the patient sits or stands motionless in various attitudes; he has no spontaneous activity, he is mute and is highly resistive to all attention. In Handerson and Gilespie's text book at page 280 some of such symptoms have been mentioned. It has been observed that one or two questions may be sufficient to elicit the fact that the listless Schizophrenic does not have any subjective feeling of sadness, but on the other hand, often feels contended and prefers to be left alone. Some of the medicines suggested in that text book at page 286 is as follows: 'E.C.T. is often of value in alleviating depressive symptoms and in disrupting acute hallucinatory states. Tranquillizing drugs, in particular chlorpromazine and trifluoperazine are useful in allaying turmoil and tension in allowing the patient to become more accessible to other therapeutic influences. Dr. Dey also in his book at page 84 suggested these medicines in such cases. The malady is very dangerous in nature. Doctors in such cases always advise patient not to marry and even if he marries, he is allowed to marry with the proviso that parenthood is inadvisable. The above subject has fully been dealt with at pages 50 and 283 by Handerson and Gillespie already referred.'

In this background, let us examine whether the appellant has made out a case. In this case, the husband has been examined as PW-1. While being, examined he has spoken about the strange and odd behaviour of the respondent when she lived with him. He also has spoken to the fact that she used to behave in an odd manner in that she used to run away from the house irrespective of the fact whether it was day or night. She used to go and lie down in stranger's house. Independent witnesses have been examined to prove these allegations. He has also deposed that she was not talking to him and was silent. When these maladies and odd behaviors became acute, she was taken to KMC hospital, Manipal on 19.5.1980. Though the Doctor who examined her, Dr. Annie Mani was not available to be examined in Court, PW-3 another Doctor who examined the respondent on the first occasion and recommended to be examined by Psychiatrist and who worked with Dr. Annie Mani was examined to prove the

outpatient record of the KMC hospital Manipal with particular reference to the entries therein relating to the respondent. Ex.P-5, Ex.P-6 Ex.P-6(a) and Ex.P-6(b) have been marked through this witness. In Ex.P-5, PW-3 has made the following noting after examining the respondent on 19.5.1980.

'Married - 2 months ago Dysparenia

Husband tells that she may have some emotional problem wife c/o she has general weakness black out and general body pain loss of memory

Pt. not communicative

xxxxPt. has got persecution ideas and left the house without information. Most likely the patient is having acute psychotic problem. However in view of her sexual problem it is advisable to have gynaecological check up before referring to the 'psychiatrist.'

Thereafter the respondent was referred to the Psychiatry Out Patient Department. We notice the following notings made by the Doctor who examined the respondent (This handwriting has been proved by PW-3) :

'12.30 P.M. To come at 3 PM for detailed assessment. Acute schizophrenic reaction Advised admission.

Not willing at present.'

The Doctor has prescribed two medicines one being Largattil. The respondent again visited the Hospital on 19.6.1990. This visit is corroborated by Ex.P-2 letter. On that day, the Doctor again examined her. The following is the noting made by the Doctor.

'stopped Rx 15 days ago. while on treatment was better Still has delusions of persecution and ideas of reference.'

The same medicines which were being administered earlier was prescribed to be continued.

9. PW-3 has opined after examining the respondent that she suffers from psychotic disorder. The Psychiatrist has observed on 19.6.1980 that the respondent showed when examined 'Acute schizophrenic reaction', Further she was convinced on 19.6.1980 the delusion of persecution and ideas of reference persisted even afterthe treatment. As stated in Modi's Medical Jurisprudence and Toxicology (21st Edn) at page 461, these are clear symptoms of the person suffering from paranoid schizophrenia. We may refer to the following passage in that book in this behalf.

'(4) Paranoid Schizophrenia, Paranoia and Paraphernalia -Paranoia is now regarded as a mild form of paranoid schizophrenia. It occurs more in males than females. The main characteristic of this illness is a well elaborated delusional system in a personality that is otherwise as well preserved. The delusions are of a persecutory type. The true nature of the illness may go unrecognised for a long time because the personality is well- preserved, and some of these paranoiacs may pass off as social reformers or founders of queer pseudo-religious sects. The classical picture is rare and generally takes a chronic course.

Paranoid schizophrenia, in the vast majority of cases, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage. Ideas of reference occur which gradually develop into delusions of persecution. Auditory hallucination follow which, in the beginning, start as sounds or noises in the ears, but are afterwards changed into abuses or insults. Delusions are at first indefinite, but gradually they become fixed, and definite so as to lead the patient to believe that he is persecuted by some unknown person or some superhuman agency. He believes that his food is being poisoned, some noxious gases are blown into his room, and people are plotting against him to ruin him. Disturbances of general sensation give rise to hallucinations, which are attributed to the effects of hypnotism, electricity, wireless telegraphy or atomic agencies. The patient gets very irritated and excited owing to these painful and disagreeable hallucinations and delusions.

Since so many people are against him and are interested in his ruin, he comes to believe that he must be a very important man. The nature of delusions thus may

change from prosecutor to the grandiose type. He entertains delusions of grandeur, power and wealth, and generally conducts himself in a haughty and overbearing manner. The patient usually retains his memory and orientation and does not show signs of insanity until the conversation is directed to the particular type of delusion fromwhich he is suffering. When delusions affect his behaviour, he is often a source of danger to himself and to others.'

The observations made by the Psychiatrist will be only after ascertaining the above noted reactions of the respondent.

10. : AIR 1988 SC2260 , extracts the following symptoms of schizophrenia:

'11-12. 'Schizophrenia', it is true, is said to be difficult mental-affliction. It is said to be insidious in its onset and has hereditary pre-disposing factor. It is characterized by the shallowness of emotions and is marked by a detachment from reality. In paranoid-states, the victim responds even to fleeting expressions of disapproval from others by disproportionate reactions generated by hallucinations of persecution. Even well meant acts of kindness and of expression of sympathy appear to the victim as insidious traps. In its worst manifestation, this illness produces a crude wrench from reality and brings about a lowering of the higher mental functions.

'Schizophrenia' is described thus:

'A severe mental disorder (or group of disorders) characterized by a disintegration of the process of thinking, of contact with reality, and of emotional responsiveness. Delusions and hallucinations (especially of voices) are usual features, and the patient usually feels that his thoughts, sensations, and actions are controlled by, or shared with, others. He becomes socially withdrawn and loses energy and initiative. The main types of schizophrenia are simple, in which increasing social withdrawal and personal ineffectiveness are the major changes; hebephrenic, which starts in adolescence or young adulthood (see hebephrenia) ; paranoid, characterized by prominent delusion; and catatonic, with marked motor disturbances (See catatonia).

Schizophrenia commonly - but not inevitably - runs a progressive course. The prognosis has been improved in recent years with drugs such as phenothiazines and by vigorous psychological and social management and rehabilitation. There are strong genetic factors in the causation, and environmental stress can precipitate illness.'

It may thus be seen that delusion of persecution and ideas of reference are the symptoms (among others) of paranoid schizophrenia patient.

11. Now, what is the effect of such a mental ailment on a person? In : AIR1975 Cal109 , it is stated after referring to the text book of Handerson and Gillespie (Text book of Psychiatry, 10th Edn) and 'An Outline of Psychiatry' by Dr. A.K. Deb that:

'The malady is very dangerous, in nature. Doctors in such cases always advice the patient not to marry and even if marries, he is allowed to marry with proviso that the parenthood is inadvisable.'

Likewise, Medical jurisprudence and Toxicology by Modi referred to supra also states thus:

'When delusion affect his behaviour, he is often a source of danger to himself and to others.'

12. It can therefore be concluded from the evidence of PW-3 and Ex.P-5, Ex.P-6(a) and Ex.P-6(b) that the respondent was at the relevant time suffering from a mental illness which is a source of danger and can turn out to be dangerous to others as well. We will now examine whether the appellant has established that the mental disorder of the respondent is to such an extent that he cannot reasonably be expected to live with her.

13. As can be seen from what is stated above paranoid schizophrenia is an affliction which is dangerous malady which can be a source of danger for himself and others. As noticed from several instances, a person suffering from the said affliction is prone to attack others when triggered. Medical Text Books do not state with affirmation as to whether it is totally curable. On the contrary Schizophrenia it

is stated is curable only in rare cases. The following passage from Handerson & Gillespie in the Text book of Psychiatry (10th Edn.) may be referred to.

'.....Recoveries seldom occur with complete insight and the patient Who becomes re-employable is seldom able to return to his own job, something simpler being required.'

xx xx xx xx xx'.....Schizophrenics have low marriage rates and low fertility rates, and few children are born to schizophrenics after the onset of their illness. If medical opinion is sought, one should usually advise a person who has had a schizophrenic breakdown not to marry, it is true that an understanding spouse might greatly help such a sensitive and predisposed individual, but child bearing and child rearing would be liable to bring stresses which would prove insupportable.'

Hence, the evidence in this case and conduct of the parties has to be viewed in this perspective. In the instant case, the appellant had lived with the respondent for a very brief period. During the said period, according to the appellant, the respondent had behaved in a queer manner, the respondent had attempted to run away from the house. This incident is spoken to by PW-2. She is a stranger to the parties. It is stated by her, that about 5 or 6 years prior to her being examined, while she was drawing water, she saw the respondent coming running from her house side ill dressed. What may be noted here is that such an incident is odd to take place in a village especially when one of the party comes from a well-off family. So, if such an incident did take place, then the villagers are likely to remember the said incident since it may not be a common affair. When a recently married woman who hails from a respectable family behaves in such a fashion it is all the more reason the incident being remembered by villagers. Therefore, there is no reason to disbelieve the evidence of PW-2.

14. If the respondent had behaved in the manner deposed by PW-2, then it is likely that it may be great source of anxiety for the appellant. Such a conduct is eternal, source of tension for him. Besides, one does not know the particular type of hallucination the patient of paranoid schizophrenia may be labouring under. As noted above if any of the actions of the appellant or his near relatives or others is

in any way directed to the particular type of delusion from which the patient is suffering, then, it will affect the total behaviour and pattern of the patient may turn violent. After all in married life, one does not know what all might transpire between the husband and wife. This is a risk that the husband runs concurrent with his married life.

15. The correspondence produced in the case, indicate that the respondent was being treated subsequent to 19.5.1980 as well. An offer was made by the respondent to get herself medically examined, but one does not know how will it be a feasible proposition and how effective it would be. The question for consideration being whether on the date of the marriage the respondent had been incurably of unsound of mind or has been suffering from mental disorder as indicated in Section 13(i)(iii), a subsequent examination of the respondent pending the proceedings will not serve the purpose.

16. We are therefore of the view that the appellant has established that respondent on the date of the marriage has been suffering from mental disorder of such a kind and to such an extent that the appellant cannot be reasonably expected to live with the respondent. Hence the appellant is entitled to succeed. The Appeal is allowed. The marriage of the appellant with the respondent shall stand dissolved by a decree of divorce. No cost.