SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

V. Bala Krishna Vs. V. Lalitha

V. Bala Krishna Vs. V. Lalitha

SooperKanoon Citation : sooperkanoon.com/431279

Court : Andhra Pradesh

Decided On : Sep-22-1983

Reported in : AIR1984AP225

Judge : Raghuir and ;Rama Rao, JJ.

Acts : Hindu Marriage Act, 1955 - Sections 5, 12 and 12(1)

Appeal No. : Appeal Against Order No. 1137 of 1982

Appellant : V. Bala Krishna

Respondent : V. Lalitha

Advocate for Def. : A. Krishna Murthy, Adv.

Advocate for Pet/Ap. : M.S.K. Sastry, Adv.

Judgement :

Rama Rao, J.

1. This appeal, at the instance of the petitioner-husband, arises out of a petition filed under S. 12(1)(b). Hindu Marriage Act, 1955, for annulment of the marriage. The averments in support of the petition may be briefly stated: The marriage between the petitioner and the respondent took place on 14-12-1980 and they both lived together as husband and wife for 23 days. The respondent during that

period had recurrent attacks of epilepsy. When the respondent had epilepsy attack on 8-12-1980 the petitioner took the respondent to Dr. G. Nagabhushanam, who opined that she was having epilepsy and gave prescription. After enquiry the petitioner came to know that the respondent had attack of epilepsy about 2 years prior to the marriage after seeing her mother in Gandhi Hospital and again she had another attack when she failed in her B. A. examination. When the respondent had the attack on 8-12-1980 the father of the respondent came and took the respondent to his house. On 14-12-1980 the father of the respondent came and when he was asked by the elders he admitted that the respondent was having epilepsy. Because of the incurable disease which the respondent is having and because of the fraud played by the parents of the respondent the petitioner filed ht epetition for annulment of the marriage. The respondent in her counter stated that at the instance of the mother of the petitioner, ht ehusband was always teasing the respondent for not bringing good dowry and jewellery from the parents. She never had attack of epilepsy at any time. The marriage was consummated and the petitioner and respondent were having normal relations. With a view to harass her the petitioner and the mother began to impose several restrictions on the respondent and therefore the respondent was spending sleepless nights and became weak. When the petitioner and the respondent went to Skandagiri temple., she felt giddy and it is false to state that the respondent was having recurrent attacks of epilepsy. The respondent passed her B. A. degree examination and is working as a teacher in Gabriel Children's School.

2. On the pleadings set out the point that arose for determination is whether the marriage between the petitioner and the respondent is liable to be annulled for the reasons stated bythe petitioner. The court below found that the alleging of recurrence of epilepsy is not proved satisfactorily and even if the respondent had epileptic fit once or twice, or more than the said number, she is physically and mentally fit for leading marital life. The learned Judge also observed that the petitioner should have got the respondent treated properly and when he finds that the respondent is found in fit for the marital life, he would have come to the court with clean hands for annulment of the marriage.

3. The learned counsel for the appellant contended that it is established beyond doubt that the wife had recurrence of epilepsy and further it is sufficient for the purpose of applicability of S. 12(1)(b) of the Act if there is an attack of epilepsy and need not necessarily be recurrent. The learned counsel for the respondent contended that the wife did not suffer from epilepsy much less recurrence of the same. It is further contended that in the absence of proof of recurrence of epilepsy at the time of marriage and if it is curable epilepsy the requirements under S. 12(1)(b) for annulment of the marriage are not satisfied. P. W. 1 the husband, P. W. 2, Dr. Nagabhushanam and P. W. 3 the neighbour were examined on behalf of the petitioner. The respondent and Dr. T. Nilkant Raj Yadav were examined on behalf of the respondent. The gist of the evidence of P. W. 1 the husband of the petitioner is that the during the period of 23 days after the marriage the respondent had epileptic fits 3 or 4 times and the marriage was not consummated and the first fit was after 4 or 5 days after she came to the house. Dr. Nagabhusanama treated her. On 8-12-1980 at about 6.30 p. m. she had a fit and again at 10-30 p. m. she had second attack and the Doctor residing in the opposite house was called and he stated that the this is a case of epilepsy and gave prescription and the prescription chit is marked as Ex. A1. The father of the respondent admitted before the Doctor that the respondent was having fits even before the marriage and the first fit was at the time when she saw her mother when she met with accident and the second attack was when she failed in her examination. The suggestion that his mohter was teasing the respondent to bring jewellery is denied. P. W. 2 is a private practitioner having his dispensary at Adigamet and another at Issamiabazar. He corroborated the fits and was called on the day when she had fits on 8-12-1980 and he told that he found it is a case of epilepsy after examination. He also confirmed that the father of the respondent came and told them that the respondent had similar fits when she was in Gandhi Hospital and they have shown outpatient ticket. The Doctor advised for X-ray of the skull and other investigation. The investigation did not reveal the defect. Then the doctor opined that it is a case of epilepsy of idiopathy. The Doctor is of the opinion that it is a chronic one and is incurable. P. W. 3 is a resident of Central Excise colony and is a neighbour of this family. He says that while the respondent was going to the school at about 9.00 or 9.30 a. m. she fell down and she was having foam from

her mouth and she was struggling with hands and legs. It is elicited in the cross-examination that the incident of the respondent falling down happened 8 months after the marriage of the petitioner. R. W. 1 the wife says that the marriage was consummated. She said that on 8-12-1980 she did not have any fit but was unwell. She denied the statement said to have been given by her father before P. W. 2 that she had fits about two years prior to that date when her mother was in Gandhi Hospital and that she had another attack when she failed in B. A. examination. On 8-12-1980 she had reeling because of the weakness when she went to Skandagiri temple. She further says that her husband, influenced by his mother asked her to go and bring jewellery and thereupon the strained feelings arose. In the cross-examination she denied the suggestion of having fits on three occasions but however admitted that she was taken to P. W. 2 and Ex. A1 was given by P. W. 2. She said that she started using the gardinal tablets from the date of Ex. A1 and even now she was using them but said that she did not know for what disease P. W. 2 prescribed the said tablets continously for a period of three years. She admitted that she was using them at the time when evidence was given. R. W. 2 is a retired Superintendent of Government Mental Hospital and was examined on 24-8-1982. He said that the respondent was produced before him by her father on 15-7-1982. On the basis of the investigations he issued them medical opinion Ex. X-6 dated 8-8-1982 certifying that R. W. 1 is not having any epilepsy and that R. W. 1 is mentally and physically fit for the married life. In the cross-examination he says that the respondent was brought before him on 15-7-1982 for the first time and he was asked to examine her whether she was having any disease like epilepsy and issue a certificate. In Ex. X-4 the name of the respondent was not mentioned. He also says that the respondent's father told him that the respondent had some faint once and therefore asked him to examine. He also told that the case is pending in this court and a report from him is required. He says that gardinal tablets will be used only in case of epilepsy and the use of gardinal tablets normaly control the fits and 75% of the cases can be cured by using gardinal. When the respondent and her father were asked whether the respondent was using gardinal tablets they stated that she is using some tablets, may be gardinal. He says that if the fits are not frequent and no abnormalities found the patient is fit for leading marital life. He was informed that the respondent was using gardinal tablets even at the time of

conducting the tests. It is profitable to advert to certain clinching circumstances which obviate the appreciation of evidence. Even though it is stated by P. W. 1 that the father of the respondent came and took the respondent to Doctor R. W. 2 and the father is attributed with the statement of attack of epilepsy even before the marriage the respondent did not choose to examine her father. It is significant that R. W. 2 examined the respondent on 15-7-1982 and gave his opinion at the instance of the father on 8-8-1982 but did not assert in the course of examination that the respondent did not suffer from epilepsy. It is elicited during the cross-examination of R. W. 1 that on 18-8-1982 she was using gardinal tablets from the date of the prescription given by P. W. 2 and even now on the date she was examined she was using them and she also stated that these tablets were prescribed for a period of 3 years continuously. Therefore it is evident she was taking gardinal tablets at the time when she was examined by R. W. 2 on 15-7-1982 and thereafter also. R. W. 2 also states that she was informed that she was using gardinal tablets even at the time of conducting tests and when he was satisfied on 8-8-1982 that she was not having any epilepsy he did not say that he advised them not to use gardinal tablets. It is categorically stated in the evidence of P. W. 1 and also P. W. 2 that the father of the respondent stated that she had an attack of epilepsy even two years back before the marriage and P. W. 2 also says that the father accompanied the respondent. Even R. W. 2 says that the father brought the respondent to him for the purpose of examining and said that the case is pending. In spite of the statement in the evidence of P. W. 1 that the father conceded the attack of epilepsy and also the presence of the father before both the Doctors, it is difficult to understand why the father has not been examined by the respondent and the statements attributed to him stand unrebutted. It appears that R. W. 2 was picked upon to contradict the evidence of P. W. 2 in view of the fact that this doctor was thought of during the pendency of the case and further R. W. 2 merely referred to his report but did not categorically say in his evidence. The admission of R. W. 1 that she was using gardinal tablets for a long time from the date of Ex. A-1 up to the date of Ex. A-1 up to the date of her evidence her admission of feeling giddy and the unrebutted statements of father to P. W. 1 and P. W. 2 about her prior attacks of epilepsy and the evidence of P. W. 1, conclusively show that the respondent had attacks of epilepsy prior to the

marriage and subsequently also.

4. The learned counsel for the appellant while stating that there is recurrence of epilepsy however contended that Sec. 12 (1) (b). Hindu Marriage Act, does not mandate recurrence in so far as epilepsy is concerned and the recurrence should be confined to insanity only. To appreciate the legal contentions projected on either side it is necessary to get at the provisions of Sec. 5 and Sec. 12 (1) (b) Hindu Marriage Act to the extent they are relevant for the purpose of this decision.

'Sec. 5.

A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely :-

(ii) at the time of marriage, neither party -

(c) has been subject to recurrent attacks of insanity or epilepsy,

Sec. 12 (1) :- Any marriage solemnised, whether before or after the commencement of this Act, shall he voidable and may be annulled by a decree of nullity on any of the following grounds namely:-

(b) that the marriage is in contravention of the conditions specified in Cl. (ii) of Sec. 5.'

Section 5 of the Act enumerates the conditions and circumstances propitious for the solemnisation of the marriage. The diverse situations envisaged for the wedlock are in the nature of positive as well as negative. Section 12 is concerned with unlocking and release from 'three knots' provided the stipulations therein are satisfied. Section 12 envisages annulment of the marriage and the grounds mentioned in Sec. 12 are considered to be not conducive to marital life. Regarding recurrence of epilepsy the learned counsel for the appellant says that the recurrence can be glued to insanity only but should not be extended further in view of the expression 'or' between insanity and epilepsy. In the context of the set up 'or' cannot be considered as disjunctive and the expression 'recurrent attacks' envelopes both the situations. The normal sequence that can be ascribed is that

the clause commencing from 'has been subject to' should be given full coverage up to the end of the clause and interruption after 'insanity' is not in consonance with normal flow of the sentence. Therefore the contentention of the learned counsel for the appellant in this regard is untenable.

5. the learned counsel for the respondent took considerable pains by reference to standard books on medicine to have clear view of the symptoms, diagnosis and treatment of epilepsy. Though this investigation is beyond our purview and comprehension we have gone through them out of deference to the learned counsel. In Harrison's Principles of Internal Medicine, Eight Edition under the caption 'The convlusive state and Idiopathic epilepsy' it is stated that the magnitude of the problem of convulsion is a leading manifestation of a medical or neurologic disease can hardly be overstated. A solitary or brief outburst of convulsions indicates involvement of nervous system. It is stated at page 131 that history of recurrent attacks of loss of consciousness or awareness associated with abnormal movements or confusion is usally sufficient to establish a diagnosis of epilepsy. If the seizures are infrequent and EEC relatively normal between attacks, prognoses for successful schooling, occupational adjustment and marriage are excellent. In Stantey Davidson's the Principles and Practices of Medicine, 7th edition at page 1088 it is stated that epilepsy is a brief paroxysmal disorder of cerebral function which recurs periodically. Before starting the specialised investigation it is necessary to ascertain by close questioning of patient and relatives when first fit occurred. The most useful criteria for diagnosis is a good description of the attack by a reliable eye-witness; examination of the patient or necessary investigations such as the electro-encephalogram etc. in the book Pharmacological basis of Therapeutics by Goodman certain passages relating to treatment are referred to. It is not feasible to burden this judgment with al the passages adverted to containing guidelines for diagnosis and treatment. The endeavour of the learned counsel is that the symptons stated in the evidence cannot be funnelled to epilepsy and the prescription of gardinal tablets need not be necessarily associated with epilepsy. We are unable to appreciate this approach and even the passages, beset with diverse permutations are not susceptible to the conclusion projeceted by the learned counsel.

6. The learned counsel for the respondent contended that epilepsy is curable and cannot be considered as hindrance to marital relationship. Sec. 12 postulates the recurrence of epilepsy only and the addition of 'curable' is tantamout to curing the provision with an extraneous component not visualised by the Act. The intention and purport of Sec. 12 is that the recurrence of insanity or epilepsy is sufficient to dislodge the marital tie and the prefix of 'curable' is not warranted by the Act. If the provision is read as inclusive of curability the question arises at what poiint of time curability comes in. certainly it is not conclusive to marital happiness if there is possibility of curability in the distant future in a short span of human life and even if it is curable at the fag end of life the question of retroactive happiness does not arise. The prospects of curability are not dimmed in view of the medical optimism generated by galloping improvement in medical science and the question of reaching the point of incurability may not arise. Thus, the introduction and the object of Sec. 12 will be completely defeated. This contention is untenable and the court below grievously erred in introducing the concept of curability.

7. The last contention of the learned counsel for the respondent is that the attack of epilepsy should be at the time of celebration of the marriage in view of the expression 'at the time of marriage' in Sec. 5. The learned counsel says that evidence is lacking as to attack. At the time of celebration of marriage. It is true that the ailment subsequent to marriage does not contribute to the annulment of marriage. The expression 'at the time of marriage' comprehends the situation of recurrence spreading over a period in close proximity to the marriage and the inference of recurrence should be arrived at on consideration of facts before and after marriage. In Munishwar Datt v. Indra Kumar while considering the lunacy as a disqualification at the time of the marriage. Tek Chand, J., held as follows at page 455:-

'The evidence of pre-nuptial or post-nuptial insanity at the time of marriage may be convincingly deduced. The standard of proof in such cases must approximate to satisfaction of the court beyond reasonable doubt. Court has to be vigilent guardian to see that the legal requirements are fulfilled before it annuls the marriage which has been solemnized, and the grounds justifying the granting of relief sought have been strictly proved.'

In Kartik Chandra Banerjee v. Smt. Manjurani Benerjee (AIR 1973 Cal 454) in the context of considering the attack of lunacy it is held as follows (at p. 549):

'Even in case of intermittent insanity we think many factors have to be considered including pre-nuptial and post-nuptial physical and mental state of the wife and the husband as the case may be to determine whether he or she suffered from lunacy at the time of marriage.'

8. We are satisfied that the wife had attacks of epilepsy before the marriage and it continued after the marriage. It is established that there is recurrence of epilepsy and the requirement under Sec. 12 (1) is fully satisfied.

9. The judgment of the court below is set aside and the petition for annulling the marriage under Sec. 12 (1) (b), Hindu Marriage Act, is allowed. Appeal allowed. No costs.

10. Appeal allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com