

**Rekha Vs. Ravindra Kumar**

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**Court :** Madhya Pradesh

**Decided On :** Apr-15-1993

**Reported in :** II(1993)DMC331; 1993(0)MPLJ719

**Judge :** R.D. Shukla, J.

**Acts :** [Hindu Marriage Act, 1955](#) - Sections 11, 12, 13, 13(1), 15, 23, 23(1) and 28

**Appeal No. :** First Appeal No. 37 of 1986

**Appellant :** Rekha

**Respondent :** Ravindra Kumar

**Judgement :**

**R.D. Shukla, J.**

1. The appeal is directed against the judgment and decree dated 28.2.86 of Vth Additional Judge to the Court of District Judge, Indore passed in case No. 56/78 under Hindu Marriage Act, whereby a decree of divorce under Section 13(1)(iii) of the Act, has been granted against the appellant-wife.

2. The undisputed facts of the case are that the parties (appellant & respondent) were married according to the Hindu rites on 20th February'77. They lived together as husband and wife and a female child was born to appellant-wife on 9.1.78 out of their conjugal relations. During her pregnancy the appellant was treated by Dr.

Dhodapkar. Thereafter, she was taken to hospital at Vellore on 27.7.78. She remained in the hospital upto 17.9.78. The petition for divorce has been filed on 6.11.78. Accepting the contention of the husband-respondent a decree as above has been passed. This appeal was filed on 9.4.86. The respondent made appearance on 22.8.86.

3. The petition for divorce was filed on the ground that the non-petitioner-wife (appellant here) is suffering from psycho pathic disorder which afterwards was diagonised as Schizophrenia. She is still intermittently suffering from mental disorder to such an extent that the petitioner cannot reasonably be expected to Jive with the non-petitioner. The following facts have been narrated for showing the sufferings of mental disorder :

Few days after the consumption of marriage i.e. on 25.2.77 she suffered from psycho-pathic disorder which lasted for 8 hours. At that time she was talking incoheretly. Her behaviour was irresponsible and occasionally aggressive. Her parents were called and thereafter on 27.2.77 she was taken to her father's house by her elder brother Pramod Kumar.

She came back to petitioner-husband nearly after 15 days and lived continuously for nearly 2 months. During this period she conceived. Thereafter, she suffered from recurrent depression. During pregnancy on 17.1.78 she started behaving abnormally and irresponsibly. She was taken to Dr. V.G. Dhodapkar. She was treated by him from 17.1.78 to 10.7.78.

After delivery of child the non-petitioner, wife was not taking care of that small child. During her treatment by Dr. Dhodapkar she was given electric shocks, but with no effects and during this period also her behaviour was abnormal irresponsible and irrational. She was taken to Vellore on 19.7.78. She was admitted in hospital from 22.7.78 to 16.9.78, and it was discovered that she was suffering from Schizophrenia. Even after her return from Vellore she has not recovered fully. She is still intermittently suffering from Schizophrenia. The petitioner, husband wanted decree of divorce on the ground that she is still suffering from incurable mental disorder.

4. The non-petitioner-wife (appellant here) accepted the treatment having been given by Dr. Dhodapkar and her treatment at Vellore, but denied the contention of the petitioner so far as her suffering from mental disorder from Schizophrenia is concerned. It was further pleaded by and on behalf of the wife, non-petitioner that during the pregnancy her behaviour became slightly abnormal. Her husband (petitioner) was living at other station, because of his service and was visiting her during weak ends and vacations. She was living with her in-laws and their behaviour including the behaviour of sister-in-law was not good towards her. They were passing surcasting remarks and teasing her. This caused irritation in her mind. It was further contended during evidence that she has obtained degree of B.Ed. as regular student of college at Hoshangabad and she is taking tutorial classes and coaching students. It has also been pleaded that after being treated at Vellore and after her return to her paternal house she has improved and recovered completely and she is of sound mind.

5. The learned trial Judge has found that the behaviour of non-petitioner, wife on 25.2.77 was abnormal; that she complained of mental depression ; that on 17.1.78 non-petitioner-wife begin behaving irresponsibly and irrationally ; that the doctor treating mental diseases found her suffering from mental depression; that her behaviour between 17.1.78 to 10.7.78 was abnormal, irresponsible and occasionally aggressive ; that she was taken for treatment to Vellore and after coming from there she was living with her parents, but she is still intermittently suffering from mental disorder and she has not improved even after returning from Vellore ; on the above findings a decree of divorce has been granted. Hence, this appeal.

6. In the memo of appeal and during the course of arguments it has been submitted that finding so far as it relates to suffering of appellant from mental depression is concerned, is perverse and not based on evidence ; that she suffered from Schizophrenia, but she was never aggressive. It has been cured and no ground of divorce under Section 13(1)(iii) exists on the date of passing of decree ; that the abnormal behaviour may have been because of the wrong treatment given by Dr. Dhodapkar who has given electric shocks on four dates without rhyme and reason. It must have caused irritation and must have adversely

affected the normal behaviour.

It has also been submitted that after her return from Vellore she has obtained a degree of B.Ed. She is teaching the students, as such she is completely cured. Her behaviour during examination and cross-examination in the Court was also wholly normal.

7. As against it learned Counsel for the respondent has submitted that petitioner can succeed on preponderance of probabilities and the evidence adduced by the parties goes to show that the appellant is suffering from Schizophrenia and her appearance before Court, facing cross-examination, obtaining a degree, teaching students of 10th classes and her appearance before the High Court is not inconsistent with her suffering from attacks of Schizophrenia intermittently.

The mental disorder suffered by the appellant was of catatonic variety which is grave enough for grant of relief to the petitioner-husband.

8. At the earlier stage a preliminary objection was taken that no appeal in the case was filed within time. Respondent-husband had no notice of any appeal till 22.8.86. He has, therefore, performed second marriage with Sushree Usha at Delhi and therefore the present appeal has become infructuous.

This objection was taken on the basis of a judgment of this High Court reported in AIR 1965 MP 194, but the same virtually stands overruled by the two judgments of the Supreme Court reported in AIR 1988 SC 839 (Tejander Kaur v. Gurveer Singh) and AIR 1989 SC 1477 (Smt. Lata Kamath v. Vilas) with the following observations :

'That the Legislature in its wisdom has enacted Section 28 conferring a right of appeal, 'which is unqualified, and not depending on the mercy or desire of a party' against all decrees in any proceeding under this Act which will include a decree under Section 11, 12 or 13 and therefore the only interpretation which should be put on the language of Section 15 should be that it will be consistent with Section 28.'

In view of the pronouncement referred above the preliminary objection has been waived and therefore this appeal has to be decided on merits.

9. P.W. 4 Shakuntalabai, the sister of petitioner and P.W. 5 Dr. Ravindra Kumar Goyal, petitioner have stated that few days after the marriage (near about 25.2.77) non-petitioner begin behaving irrationally. She was singing and using abusive language, she did not sleep for the whole day and night. Thereafter, the message was sent to her father and therefore his elder brother came and took her to her father's house. Though, there is no effective cross-examination on this point, but this fact has been denied by D. W. 2 Pramod Kumar in para-8 of his statement. He stated that there is custom in their community that bride lives with bridegroom for few days and thereafter she is taken to parental house. D.W. 1 Rekha has also denied this fact in para 12 of her statement. It is surprising that despite non-petitioner's irrational behave for 8 hours with the sign of mental disorder, why a doctor was not consulted

10. The non-petitioner had come to her husband's house for the first time. She may have suffered exertion because of so many family ceremonies and may not have had proper sleep 'as told by her' and that may have caused some psychological problem.

Though, as submitted by the Counsel for the respondent husband that since she had come for the first time to their house, they may not have thought it proper to consult physician immediately for mental disorder.

11. Thus, there are both the possibilities first that because of the mental pressure by the change of place and so many ceremonies she may have had less sleep and may have developed some psychological problem and secondly she may have shown some sign of mental disorder.

But, the burden lies on the petitioner-husband to show that the alleged irrational behaviour was there; and that the same was because of the mental disorder. And, therefore, in the absence of any medical evidence about the condition of non-petitioner that day it cannot be conclusively accepted that she suffered some attack of mental disorder on 25.2.77. In the opinion of this Court, therefore, that

finding of the Trial Court does not appear to be correct.

12. The petitioner has thereafter stated that non-petitioner complained of mental depression on 9.1.78 and thereafter had an attack of mental disorder on 17.1.78 as such Dr. Ghodapkar was called for her treatment. He started treatment, which continued till 10.7.78.

13. Dr. Ghodapkar, who has been examined as P.W. 3 in the case, has stated that he has treated non-petitioner Rekha Goyel from 17.1.78 and treated her till 10.7.78. She was suffering from depressive psychosis. She was examined by him on 17.1.78, 17.4.78 and 12.6.78. He has further stated that she had no insight, no orientation and failing memories. He, therefore, prescribed medicines. Since the medicine prescribed did not have proper effect, she was given electric shocks on 12.6.78, 16.6.78, 24.6.78 and 10.7.78. He has also stated that since there was no improvement he advised her to be taken somewhere outside Indore.

14. During cross-examination this witness has admitted that he has not kept the record of the treatment and the general condition of the patient. He has also not kept the record of the blood pressure of patient (non-petitioner). He has tried to state about the blood pressure of patient on 17.4.78 (para-10), but the same cannot be relied as it is impossible for a busy doctor to remember the blood pressure of a particular patient and that too on a particular day. He was examined in Court nearly after 4 years for that reason also it does not inspire confidence that the doctor may have remembered blood pressure of the patient.

Treating a patient of a depressive psychosis or for mental disorder and giving electric shocks to her without maintaining the proper record of the general condition including the blood pressure of the patient goes to show that the doctor was not vigilant about the treatment. Dr. Ghodapkar has further admitted in para-7 of his statement that a person cannot suffer from both that is Schizophrenia and depressive psychosis.

15. Dr. Abraham Verghese, who has been examined on Commission by the petitioner has very clearly stated in para 2 of his statement that Rekha was suffering from Schizophrenia. The same has been written on page 3 of his

statement as well.

16. Thus, the diagnosis of doctor Ghodapkar that she was suffering from mental depression appears to be wholly incorrect. Dr. Ghodapkar has given electric shocks to the patient Rekha without maintaining the regular record of her behaviour, general condition and blood pressure. This goes to show that he has not acted responsibly and the cruel treatment of electric shocks was given without rhyme and reason. He has tried to state about the condition of the patient on the basis of his memory that goes to show that, in order to justify and support his action, he has given those false details. He does not appear to be a truthful witness.

17. This may not be out of place to mention it here that if a person is treated for depressive psychosis without suffering therefor and is given electric shocks for four times that is likely to further worsen the condition of the person who is treated as such. This is likely to aggravate the mental disorder.

18. In the opinion of this Court, therefore, it appears that the behaviour of non-petitioner-wife during 17.1.78 to 10.7.78 was not wholly normal. She suffered from mental disease Schizophrenia, as referred above, but she was neither aggressive nor the alleged mental disorder was of such an extent and magnitude that the petitioner husband could not reasonably be expected to live with her and this mental disease was further aggravated by wrong treatment of Dr. Ghodapkar. There is every possibility of aggravation of the mental disease, because of the cruel treatment of electric shocks without being need therefor. 'In appropriate line of treatment can aggravate the illness as has been answered in affirmative by Dr. Abraham Verghese in page 6 of his statement.'

19. Dr. Abraham Verghese, who has examined on Commission, has stated that the non-petitioner-wife was treated in Vellore hospital. She had psychiatric symptoms. There was disturbance in her thought process. After group discussion it was diagnosed that she was suffering from Schizophrenia. She was admitted in hospital and during her treatment in Vellore hospital she was looked after by Dr. Janki Radhakrishnan and Dr. Deepa Shaha. The suggestions on being put regarding mental depression or depressive psychosis during her stay in hospital

has been clearly denied by the doctor. Dr. Abraham Verghese has further stated that she responded to the treatment and during her discharge her condition had improved.

20. It has also been stated by Dr. Abraham that as per history given by the husband she was suffering from the disease referred above for the last 9 years and this history was given by the husband, but this history given by the husband does not appear to be correct as they were married in February'77 and she was admitted in the hospital at Vellore on 22.7.78. Thus, it is doubtful as to how the husband acquired knowledge of ailment for the last 9 years unless that history was given by somebody from parental side.

21. The petitioner-husband has filed some prescriptions and letter Ex. P/6 written by the brother of non-petitioner wife which shows that she was suffering from mental disorder and her behaviour was not normal. Thus, it is proved that non-petitioner-wife suffers from mental disorder i.e. Schizophrenia.

22. The Counsel for the petitioner (respondent here) has tried to read some piece of paper posted at a bigger piece and allegedly written by non-petitioner-wife to show and demonstrate that she has admitted about her ailment of mental disorder from much before. He has tried to show that these are the facts of admission, but one or two sentences in isolation and out of the whole context cannot be taken as proof for admission of ailment.

23. Now, therefore, it has to be seen as to whether the mental disorder is of such an extent and magnitude that it is not reasonably possible for the husband to live with her and that she (non-petitioner) is still suffering from mental disorder.

Dr. Abraham Verghese has stated in answer to Q. No. 10(a) & (b) that the patient has to take treatment for a long time. She never suffered from depressive psychosis. He has not accepted the suggestion that the treatment will have to be taken for whole life or indefinitely. Thus, from the statement of Dr. Verghese and the letters referred above the only inference which can be drawn is that non-petitioner suffered from Schizophrenia which was created and there was improvement because of the treatment at Vellore.

24. The non-petitioner-wife has denied the contention of the petitioner and stated that she passed her graduation in 1971 and obtained degree of B.Ed. in 1983. She is taking coaching classes and is teaching students of 11th class. She was examined in Court on 29.1.86. There is no cross-examination on this point. It is, therefore, proved that non-petitioner-wife has obtained a degree of B.Ed. in 1983, during pendency of this petition in the Court. She has further asserted that she was never aggressive. She was given electric shocks, this aggravated her condition and she has been completely cured after taking treatment at Vellore.

25. D.W. 2 Pramod Kumar has also corroborated the story disclosed by non-petitioner-wife about her obtaining degree of B.Ed, and taking classes. He has tried to explain that before marriage non-petitioner Rekha suffered from typhoid and delirium and she was treated for that.

26. The Counsel for the petitioner has referred to letter dated 7.11.78 (Ex. P/11) written by Dr. Deepa Shaha which was probably in response to letter (Ex. P/10) written by the petitioner. In that letter Dr. Deepa Shaha had written that the non-petitioner will have to take continuous medication indefinitely. Thus, from the statement of Dr. Verghese and this letter of Dr. Deepa Shaha it can be inferred that non-petitioner will require medicine for controlling the Schizophrenia for an indefinite period, but neither the petitioner nor his witnesses including Dr. Verghese have stated that non-petitioner was aggressive or violent at any time or that her behaviour was wholly irresponsible so as to cause indignation in the mind of the persons of the family.

27. It has been submitted by the Counsel for the respondent that the non-petitioner did not get herself examined in All India Medical Institute at Delhi, as offered by her, and, therefore an adverse inference has to be drawn. As against it learned Counsel for the appellant has submitted that she was ready and willing to be examined, but the expenses were not paid by the petitioner husband and, therefore, no adverse inference can be drawn.

28. In the opinion of this Court the burden of proof of disease of mental disorder entitling the petitioner-husband for a decree of divorce lies on him and therefore it was his duty to have paid the expenses for examination and if non-petitioner did

not go to All India Medical Institute for want of fund no adverse inference can be drawn against her. It appears that non-petitioner offered to be examined by Dr. Verghese, but he refused to examine her probably without the orders of the Court. Thereafter, an application was also filed for a direction for examination of non-petitioner (probably to know the latest condition). By Dr. Verghese, but the same was opposed by petitioner-husband and therefore now he cannot be allowed to say that non-petitioner avoided examination or that adverse inference may be drawn against her.

29. From the letters Ex. P/8 & P/9 and from the admission of defendant in cross-examination it appears that after getting non-petitioner wife admitted in the Vellore hospital he did not go to see her and thereafter she was taken to her parents' house. It also appears that they have never lived together after her return from Vellore and she is continuously living for last so many years alongwith her parents. This goes to show that the petitioner-husband is absolutely unaware of the latest condition of the non-petitioner and therefore this assertion of petitioner that she is still intermittently suffering from mental disorder appears to be incorrect.

In the opinion of this Court, therefore, this fact of intermittently suffering from mental disorder has not been proved by the petitioner and this finding of learned Trial Court is incorrect.

30. In order to obtain a decree under Section 13(1)(iii), which reads as follows :

'has been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent. Mental disorder includes Schizophrenia (as in this case).

The petitioner has to prove that the mental disorder is of such an extent and magnitude or of such a kind and intensity that the petitioner reasonably can not be accepted to live with her. The following observations of Their Lordships of the Supreme Court in case of Ramnarain Gupta v. Smt. Rameshwari Gupta, reported in 1988 (4) SCC 244 & AIR 1988 SC 2260 ;

'Section 13(1)(iii) does not make the mere existence of a mental disorder of any degree sufficient in law to justify the dissolution of marriage. The contract in which the idea of unsound-ness of 'mind' and 'mental disorder' occur in the section as grounds for dissolution of a marriage' requires the assessment of the degree of the 'mental disorder'. Its degree must be such 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 degree. The medical concern against too readily reducing a human being into a functional nonentity and as a negative unit in family or society in laws concern also and is reflected atleast partially, in the requirements of Section 13(1)(iii). The personality disintegration that characterizes Schizophrenia may be of varying degrees. Not all Schizophrenics are characterised by the same intensity of the disease. The burden of proof of the existence of the requisite degrees of mental disorder is on the spouse basing the claim on that state of fact.'

Thus, as referred above the burden lies on the petitioner to prove the requisite mental disorder which he has failed.

31. Learned Counsel for the respondent has submitted that the petitioner can succeed on preponderance of probabilities and further the question of onus to prove is not relevant when the parties have led evidence. A party in possession of best evidence should lead it irrespective of burden of proof and if such evidence is withheld, adverse inference may be drawn. Learned Counsel in support of his contention, has referred cases reported in :

AIR 1975 S.C. 1534 (para 26) AIR 1959 S.C. 31 (para 21) AIR 1973 S.C. 629 (para 2) AIR 1968 S.C. 1413 (para 5).

32. *Dastane v. Dastane*, (AIR 1975 SC 1534) was a case based on cruelty. Their Lordships of the Supreme Court have held that the petitioner is not required to establish the charge of cruelty beyond reasonable doubt. There is no dispute on this point, but even for a relief of judicial separation on ground of cruelty petitioner is required to prove that respondent has treated him with such cruelty as to cause a reasonable apprehension in his mind that it will be harmful or injurious for him to live with respondent. This proof of cruelty is required to the extent of

preponderance of probability, but in a case of mental disorder, as observed in the case of Ramnarain Gupta v. Rameshwari Gupta, (supra) the observation of the High Court that the plaintiff failed to adduce any evidence that could prove beyond reasonable doubt that the mental disorder of defendant was of such a kind and to such an extent that the plaintiff cannot live safely with the defendant has not been disapproved by their Lordships of Supreme Court. Thus, in cases of mental disorder a higher degree of proof is required and that is lacking in this case.

33. A.I.R. 1959 S.C. 31 was a case of adoption. In a case reported in AIR 1973 S.C. 626 it has been observed by their Lordships that where both the parties have adduced evidence the question of burden of proof loses its importance. I am in agreement with that observation, but in this case the fact of mental disorder of such an extent and magnitude that the petitioner cannot reasonably be expected to live with her wife has not been proved. And, therefore, even if that standard is applied (though that was a case of restitution of conjugal rights and the decree of the same was affirmed) the petitioner has failed to prove the degree of mental disorder even intermittently entitling him for a decree under Section 13(1)(iii) of H.M. Act.

34. So far as the case reported in A.I.R. 1968 S.C. 1413 is concerned, the facts are different and has no direct bearing in the case. This is not a case where non-petitioner has withheld some evidence. At the most it can be said that she did not get herself examined regarding having cured completely, but she could always demand for reasonable expenses for the same. The husband having failed to pay the expenses, now cannot be allowed to say that the best evidence has been withheld.

35. The non-petitioner has appeared in the Court and offered herself for examination. She has been subjected to lengthy cross-examination. She answered questions properly. That itself goes to show that she has not withheld the best evidence available. The Court could take note of demeanors including her appearance, conduct and behaviour in the Court for drawing reasonable inferences, but the Counsel for the respondent-husband failed to show any adverse observation having been made or noted by the Court at the request of the

Counsel for the respondent or otherwise during her examination or cross-examination in the Court.

36. The non-petitioner has appeared before this during the hearing of this case. She was questioned in presence of Counsels for both the parties and she gave rational answers to the questions. This also goes to show that she was never trying to withhold the best evidence of her mental condition.

37. Even if the contention of the learned Counsel for the respondent is accepted that appellant-wife failed to get herself medically examined to show the latest condition, no adverse inference can be drawn against her as there is no provision under the Act to compel the wife for medical examination. In this case since she was examined and admitted in Vellore hospital the matter would not have improved (Reference may be had to AIR 1982 Calcutta 138 (D.B.) (Smt. Rita Roy v. Shitesh Chandra Bhadra Roy).

38. Thereafter, learned Counsel for the respondent submitted that the marriage has irretrievably broken and therefore decree of divorce be granted. This may be an additional ground, but the main ground, as referred in Section 13, is required to be proved. Unilateral dissolution of marriage, as in this case, cannot be allowed to exist on this ground of irretrievable break down of marriage.

39. Learned Counsel for the respondent has thereafter submitted that the non-petitioner was suffering from catatonic Schizophrenia that is of the third degree of Schizophrenia. I do not agree with this contention, as the doctor Abraham Verghese, the witness examined by the petitioner on commission has not confirmed the same. Further, the behaviour of non-petitioner-wife was not aggressive or seriously irresponsible.

40. The last submission of learned Counsel for the appellant also deserves consideration that the grounds for granting relief of divorce (Schizophrenia in this case) should exist on the date of grant of decree Merely because a person has suffered from Schizophrenia will not be sufficient for grant of that degree.

Learned Counsel for the respondent has tried to meet this contention by submitting that if a party succeeds in proving mental disorder, he is entitled for a decree of divorce.

41. Section 23(1) of Hindu Marriage Act reads as follows :

'In my proceeding under this Act, whether defended or not, if the Court is satisfied that--

(a) Any of the grounds for granting relief exists and the petitioner-except in cases where the relief is sought by him on the ground specified in Sub-clause (c) of Clause (ii) of Section 5] is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and

(b) .....

(bb) .....

(c) .....

(d) .....

(e) there is no other legal ground why relief should not be granted then, and in such a case, but not otherwise, the Court shall decree such relief accordingly.'

This goes to show that the ground of divorce must exist on the date of grant of decree excepting the grounds referred therein. Thus, in this case it was the duty of the petitioner-husband to have proved that the grounds exist on the date of the filing of the petition as on the date of grant of decree as well.

42. In the opinion of this Court, therefore, the petitioner has failed to prove the mental disorder of such an extent and magnitude that the petitioner-husband cannot reasonably be expected to live with her. No other ground of divorce has been taken in this case. As a result, the appeal succeeds and the judgment and decree referred to above is set aside. The petition under Section 13(1)(iii) of Hindu Marriage Act for grant of decree of divorce is dismissed. The respondent shall bear his own cost and shall bear the cost of appellant. Counsel fee Rs. 750/-, if

certified.

Appeal succeeds.

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