

Satrupa Vs. Basant Kumar

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Court : Madhya Pradesh

Decided On : Mar-04-1999

Reported in : II(2000)DMC109

Judge : S.C. Pandey, J.

Acts : Hindu Marriage Act, 1995 - Sections 13(1)

Appeal No. : First Appeal No. 374 of 1995

Appellant : Satrupa

Respondent : Basant Kumar

Advocate for Def. : Masood Ali, Adv.

Advocate for Pet/Ap. : Ashok Chakrawarti, Adv.

Disposition : Appeal dismissed

Judgement :

S.C. Pandey, J.

1.This is an appeal filed by the wife against the judgment and decree dated 31st of October, 1995 in Civil Suit No. 51-A/94 decided by the learned Special Judge, Marriage and Family Dispute, Sagar. The respondent filed an application under Section 13 of the Hindu Marriage Act, 1955, registered as Civil Suit No. 51-A/94,

against the appellant on the ground of desertion and cruelty.

2. The case of the respondent was that after marriage on 9.2.1989 in village Kesli, the appellant came to her matrimonial home at village Chandpur. Thereafter, on 12.2.1989 she went to village Kesli. It was claimed that the respondent and the appellant did not cohabit together as husband and wife for two days when the appellant remained with her at Kesli between the period of 10.2.1989 to 12.2.1989. The respondent claimed that the appellant did not allow sexual contact with her on the ground that she was having menstrual discharge during that period. Thereafter, the appellant was not sent back by her father on the ground that the appellant was having her examination. Thereafter, the father of the appellant Shri Ramcharan Pachauri sent her back without the usual ornaments worn by the wife. Even after coming back to the matrimonial home she denied physical contact with the respondent. It was claimed by the respondent that for a whole month, she did not permit him to have sexual intercourse with her. It was claimed by the respondent that the appellant did not like him because he was not educated. Thereafter for last 2 years, the appellant went back to her father and remained at her parental home for 2 years compelling the respondent to file an application for divorce. However, on 5.3.1994, at the instance of the Court, there were reconciliation between the husband and wife and the appellant went back to her 'matrimonial home. It was claimed that during the period she remained there for about 3 months. The respondent did not permit any sexual contact and then against went back to her parental home. On these allegations, the civil suit aforesaid was filed.

3. The suit filed by the respondent is that the case led by the respondent was false. It was denied that she did not permit the respondent to have sexual relations with her. It was claimed that after 5.3.1994 they had sexual relations. According to the appellant, the root cause of quarrel between them was the demand of dowry on the part of the respondent and the members of his family which could not be fulfilled by her father who was merely a teacher. It was claimed that on account of aforesaid demand of dowry, she was being treated cruelly and beaten. She used to live without food and she became ill. It was further claimed that the members of the family of the respondent had driven her out after seizing all those ornaments in her possession. It was claimed by the appellant that after 5.3.1994, she became

pregnant but on account of the weakness of the appellant due to ill-treatment on the part of the respondent and the members of his family, the appellant became so ill that there was an abortion.

4. On these allegations, the case was tried by the Court below. The Court below after recording the evidence, came to the conclusion that the appellant has deserted the respondent and treated the respondent cruelly. Therefore, the decree for divorce was granted.

5. In this appeal, the learned Counsel for the appellant argued that so far as the first part of the issue is concerned that the appellant deserted the respondent, it cannot be held that the judgment and decree passed by the Court below was in accordance with law. It was asserted by the learned Counsel for the appellant that in order to succeed under Section 13(1)(ib), there must be a desertion of the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. In this case, it was claimed that on the date the application was filed, the appellant had not deserted the respondent for continuously for a period of 2 years. The respondent was not entitled to tag previous desertion of 2 years in order to claim decree for divorce on the aforesaid ground of desertion.

6. In the opinion of this Court, the learned trial Judge has not considered the question of desertion from the point of view of time, desertion should be for a continuous period of 2 years. The case of desertion is bound to be pleaded and proved in aspect of the matter. It is not disputed by the respondent that as a consequence of reconciliation proceeding on 5.3.1994, the appellant did go back to the matrimonial home. The respondent had stated in his evidence that she remained for about 15 days in his house. The application was filed on 7.5.1994 and, therefore, on the date of the filing of the application, 2 years were not completed after the appellant left her matrimonial home. The question of desertion should not be considered in view of the admission of the respondent that the appellant lived with him for 15 days after reconciliation proceedings. Any previous desertion stood condoned and the respondent was not entitled to tag any previous misdemeanour on the part of the appellant. Therefore, the Court below was totally

wrong in granting a decree on the ground of desertion.

7. Therefore, the only question that remains to be decided whether the respondent was rightly awarded a decree of divorce falling under Section 13(l)(ia) of the Hindu Marriage Act. If the appellant had treated the respondent with cruelty, he was certainly entitled a decree for divorce. The question is, therefore, whether the Trial Court had rightly appreciated the evidence in this regard. The main ground on which cruelty was to be proved on behalf of the respondent was that during the period of 6 years of marriage, the appellant did not permit the respondent to consummate the marriage. In this connection, the evidence of the respondent Basant Kumar (A. W. 1) has to be seen. The evidence shows that the appellant is more educated than the respondent. The respondent has failed in Matric, therefore, the appellant did not like the company of the respondent. She did not like the members of his family and, therefore, she would not allow the respondent to have sexual connection with her. He denied that after 5.3.1994 to 13.8.1994, he had any sexual contact with his wife. He had further denied that he treated his wife cruelly or beaten her for dowry. The evidence of the respondent is supported by the evidence of Ashok Kumar {A.W. 2) and also was to some extent by Vishnu Prasad Dube (A.W. 3). As against this, the main witness to deny the allegation made by the respondent was the appellant herself. She claimed that she permitted her husband to consummate the marriage and for 4 days she remained with him at Chandpur after 9.2.1989. Thereafter, she stated that whenever she went back to her husband's house she had physical relations with him. The real cause for the trouble was demand of dowry and cruel treatment on her part. She admitted that she was studying in the B. A. iind year and she filed the document of her educational qualification as Annexure-A.1C Thereafter, she claimed that when the respondent had filed a suit for divorce earlier, there was reconciliation on 13.8.1994 and she went back to her matrimonial home and resumed physical contact with her husband. It was claimed by her that as a consequence of their relations, she became pregnant. But she was required to go back to her parental home on account of ill-treatment given to her by the respondent and the members of his family. She further stated that she became so weak that she had an abortion and for this purpose, she produce a certificate marked as Annexure-MA2 (C). This certificate is given by a Block Medical Officer on 13.9.1994 showing that there was

some difficulty and there was an abortion after she became pregnant for 312 months. The respondent however, did not examine the Doctor and did not give an opportunity to the respondent to challenge the testimony of the Doctor issuing a certificate. The Court is of the view that the certificate issued by the Doctor would not be admitted in evidence in his absence. In any case, no reliance can be placed on this document for proving its contents of the concerned Doctor was not examined by the appellant. The non-examination of the concerned Doctor shows that the appellant did not prove her case that she became pregnant after she went to her husband. The evidence of N.A. 2 Girish Kumar, the brother of the appellant, and Hari Pachauri (N.A. 3), another brother is of no consequence for proving the case of the appellant. Similarly, the evidence of Shiv Hari is also of no consequence.

8. The evidence regarding the cruel treatment meted out to her in the house of the respondent had not been proved, according to Court below. Reliance has been placed on Ex. D/2, a post card supposed to have been written by the appellant claiming that there was a demand of money for the purpose of purchasing of tractor. The letter is dated 11.3.1993 apparently written from Chandpur. The appellant did not give any evidence to prove that she had written any letter nor did she identify the letter in the Court. This letter was produced by N. A. W. 4 Shiv Hari. It is strange , that this letter was not produced at the time when the appellant was giving her evidence. Under these circumstances, the letter is of no value because it is for appellant to say in her evidence that she had written such letter and she could be i subjected to cross examination by the respondent. That opportunity was lost. That i apart in cross examination N.A.W. 4 Shiv Hari stated that the letter was received by his father in the year 1989, whereas this letter is dated 11.3.1993 and bears the seal of the post office dated 13.3.1993. This witness Shiv Hari N.A.W. 4 was exposed in the cross examination when he stated that the photocopy was sent to his lawyer six months back. Since the lawyer conducting the case did not put the post card to the appellant herself in the witness box, it is reasonable to hold that he was not aware about the letter. Apart from this letter, the appellant has not led any evidence to show that there was any ill- treatment on the part of the respondent. The trial Judge who had seen the witness at the time of their deposition have disbelieved the evidence of these

witnesses. This Court does not see any reason to differ with the finding recorded on this aspect of the matter. This Court holds that the appellant was unable to prove that she was treated cruelly by the respondent.

9. Now the only question which remains to be seen is whether the respondent was treated cruelly by the appellant when she denied to consummate the marriage. This is an intimate matter and the only evidence that can be given by either husband or wife when there is any absence of any medical evidence. The Court has to look into the entire circumstances if, the husband or wife is speaking truthfully. The learned trial Judge has believed the story of the husband. However, this Court is bound to re-examine the evidence as a final Court of facts in this appeal. In this connection, the conduct of the parties is of some consequence. It is not disputed that the respondent was forced to file an application for divorce. There was a reconciliation between the appellant and the respondent. Secondly, the respondent is not as highly educated as the appellant who is already studying in B.A. Class. There is no reason for husband to treat his wife cruelly after he had agreed to take her back at the instance of the Court as claimed by the appellant. Moreover, she was unable to prove the fact of ill-treatment either before or after the reconciliation proceedings. On the other hand, there are every reason to believe that the respondent did not treat her cruelly as she had lost other cases against respondent. It appears to this Court that the story of the respondent appears to be correct. The appellant had not led any proper evidence to prove that she was really pregnant after reconciliation proceedings and that she had an abortion. If she had proved that fact it could be concluded that she had sexual relations with the respondent after reconciliation. The fact that at the relevant time she had an abortion was specially within her knowledge because she was living apart from the respondent. Therefore, the burden of proof was upon her under Section 106 of the Evidence Act. The fact of abortion is not proved by producing a certificate without examining the Doctor. Therefore, the story of her pregnancy and after reconciliation is not accepted. The story appears to be created in order to justify her conduct. Apart from that the Court is to weigh her evidence as against that of issuing respondent Basant Kumar that there was no consummation of marriage. It appeared to Court below that evidence of Basant Kumar is more trustworthy. The appreciation of evidence appears to be sound because the

attitude of the appellant from the very inception of the marriage was that she was unwilling to live with the respondent. It is more than probable that she never liked the respondent. Therefore, this Court confirms the finding of the Trial Court that there is preponderance of probability that respondent did not permit any sexual contact with the appellant. The result is that the respondent has been held to have proved ground under Section 13(l)(ia) of the Act. The decree for divorce granted on the ground by the Court below appears to be correct. There is no merit in this appeal. It is dismissed. There shall, however, be no order as to costs.

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