

Vishambhar Vs. Smt. Buta Devi

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Court : Madhya Pradesh

Decided On : Apr-29-2002

Reported in : II(2002)DMC435; 2002(4)MPHT84

Judge : Subhash Samvatsar, J.

Acts : [Evidence Act, 1872](#) - Sections 45; [Hindu Marriage Act, 1955](#) - Sections 12; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115

Appeal No. : Civil Revision No. 429/98

Appellant : Vishambhar

Respondent : Smt. Buta Devi

Advocate for Def. : P.N. Kelkar, Adv.

Advocate for Pet/Ap. : A.M. Nain, Adv.

Disposition : Civil revision allowed

Judgement :

ORDER

Subhash Samvatsar, J.

1. This revision is arising out of a matrimonial matter. The revision is filed by the plaintiff/husband, who had filed a petition for dissolution of marriage, filed under

Section 12 of the Hindu Marriage Act, challenging the order refusing him the permission to examine the respondent from medical expert.

2. The facts of the case are that the petitioner had filed an application under Section 12 of Hindu Marriage Act for annulment of marriage. The allegations of the plaintiff are that the petitioner and respondent married on 13-7-1994 at Ummedgarh and came to their residence at Gwalior on 15-7-1994. On that date the petitioner came to know that the respondent was carrying and was pregnant on account of her sexual relations with some third person, therefore, the petitioner did not cohabit with her and there was no physical relation between them. The petitioner immediately on 16-7-94 reported this matter to the father of respondent, who came to Gwalior on 18-7-94 and took the respondent to a Gynaecologist, who confirmed about the pregnancy and advised ultrasound sonography. On 19-7-94 sonography was performed and the age of foetus was found to be 29 weeks and 4 days. The respondent's father thereafter took the respondent to his house at Ummedgarh and thereafter the petition was filed.

3. During the course of evidence the petitioner examined Gynaecologist Dr. (Smt.) Shela Sapre and Dr. R.P. Gupta for proving their medical reports. Both these doctors confirmed that they have given the said medical report but they could not identify the respondent to say that the said reports relate to her. In view of this statement, the husband/petitioner filed an application under Section 45 of the Evidence Act, for examining the respondent by a specialist i.e., Medical Board or by some other independent doctor. The Trial Court rejected this application by the impugned order by saying that the allegations relate to 1994 and after lapse of four years asking respondent to be examined by specialist will not be of any use as the specialist will not be in a position to give any opinion about the pregnancy.

4. Learned Counsel for the petitioner has placed before me the Medical Jurisprudence and Toxicology by N.J. Modi, Twentieth Edition, Fourth Reprint. At page 323 of the said book the author has given an opinion that the sign of remote delivery can be ascertained by physical examination of a woman. The said paragraphs reads as under:--

'III. Signs of remote delivery in the living.-

1. Abdomen.-- The abdominal wall is relaxed, and marked with white silvery streaks, called the lineae albicantes, which results from overdistension. These lines also occurs from ascites, ovarian tumours, etc.

2. Breasts.-- These are soft and pendulous, marked with lineae. albicantes. The areolae are dark. The nipples are prominent and larger than usual, unless the woman has suckled her child.

3. Vagina.-- The labia are more or less separated from each other. The vagina is somewhat capacious, its rugae are absent, and its walls are relaxed, especially in a multiparous woman. The fourchette and posterior commissure are destroyed, and the parinaeum may be found ruptured. The hymen is absent, or may be seen as separate nodules in the form of carunculae mytifformes.

4. Cervix.--The cervix is cleft transversely with ragged and irregular margins. The os is wider.'

5. Similar view is expressed by COX'S Medico-Legal Court Companion, Fourth Edition (at page 242), which reads as under :--

'The following are the signs of remote delivery in the living :--

As a rule, childbirth leaves permanent indications of it in the mother's body, and the greater the number of children the more likely are these indications to be found. On the other hand, it would be impossible to swear to a delivery in a female after a period of twelve months if the contents of the womb had been expelled before the six months. No single sign is of much use in forming an opinion on this subject; many signs are needed.

As a rule, the breasts are pendulous, the nipples long, and the pigment of the areolae darkened. The body of the breast may exhibit pale streaks, the result of previous distension.

The breasts of any woman may become pendulous. In young people they may become so through masturbation. It will be difficult to gauge the degree of tint of the areola owing to the colour of the skin varying so much among Indians. The

presence of Montgomery's tubercles would be more reliable. The pale streaks, if found, prove that the breasts have at some time been greatly distended, as by obesity or inflammation and not that pregnancy was the cause. The breasts as a rule, become somewhat wrinkled after lactation.

The abdominal walls are less firm and elastic, and are usually marked by white streaks on their lateral aspects. These signs may have been the result of dropsy, obesity, tumour, etc. There is generally a deeply pigmented median line extending from the navel to the pubes.

If the hymen is present, it will be found in several places, the tears extending completely down to the vaginal walls. When the hymen is ruptured by coitus the tears do not extend to the vaginal walls, and portions of the membrane by the found between these tears. If delivery has taken place, the hymen will be represented by either, small projecting tags or nothing at all, the membrane having completely sloughed away. It is asserted that an unruptured hymen is positive proof that delivery has never taken place.'

6. After going through both these books, it is clear that by medical evidence it can be proved that woman was pregnant in remote past as the physical changes in her body are of permanent nature.

7. Learned Counsel for the respondent vehemently opposed this prayer by saying that a decree under Section 12 of Hindu Marriage Act annulling the marriage can be passed only if it is proved that the lady was pregnant on the date of marriage and not before or after the date of marriage.

8. After going through the written statement on record, I do not find that the case of the defendant is that she was pregnant either before the marriage with the petitioner or thereafter. In fact she has denied the allegations in toto. The respondent has nowhere alleged that she is In sexual relationship with the petitioner and thus, there was no occasion for her being pregnant after the marriage. Moreover, the events alleged by the petitioner are in very close proximity. In my opinion, even if the specialist cannot give the date of pregnancy of the respondent, still his opinion that she was ever pregnant can be used as an

important corroborating evidence to corroborate the statement of Dr. Shela Sapre and Dr. R.P. Gupta and the report of sonography and is an important piece of evidence, which is illegally shut down by the impugned order.

9. Thus, in my opinion, the Trial Court while exercising jurisdiction has acted with material irregularity in rejecting the application. The application is, therefore, allowed and it is directed that the respondent be examined by any specialist and in the event she refuses to be examined from the specialist appointed by the Court, an adverse inference can be drawn.

10. With these observations, revision is allowed. Impugned order is set aside and the Trial Court is directed to dispose of the matter expeditiously.

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