

Gulab Rao Vs. Indu Bai

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Court : Madhya Pradesh

Decided On : May-06-2003

Reported in : I(2004)DMC128

Judge : A.K. Awasthy, J.

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

Appeal No. : First Appeal No. 23 of 1997

Appellant : Gulab Rao

Respondent : indu Bai

Advocate for Def. : None

Advocate for Pet/Ap. : B.R. Nagle, Adv.

Disposition : Appeal dismissed

Judgement :

A.K. Awasthy, J.

1. The appellant/applicant has filed this appeal under Section 28 of the Hindu Marriage Act against the judgment and decree dated 24.12.1996 delivered by Additional District Judge, Multai, District Betul in Civil Suit No. 8-A/1996 wherein the petition filed under Sections 13(1)(i-a) and (ib) of the Hindu Marriage Act was

dismissed.

2. The admitted facts of the case are that the marriage between the appellant and respondent was solemnised on 7.5.1994 at village Aathner according to Hindu rites and customs and there is no issue from their wedlock. It is also the common ground that the respondent/wife has left the matrimonial house from 4.2.1995 and now she is living with her parents.

3. The case of the appellant/applicant is that the respondent has stopped doing the house work and preparing the meals. It is alleged that the respondent/ wife has refused to perform the cohabitation and she insults the appellant alleging that his colour of skin is dark and he is of Gond community. The appellant has alleged that the respondent/wife has threatened him that if he will compel her for cohabitation then she will consume the Sulphas tablets and commit suicide.

The appellant has averred that in spite of the persuasion, the respondent/wife has refused to do the domestic work and resume marital relation. That the respondent is intentionally ill-treating the appellant and extending the threat that she will involve the appellant and his family in the case of demand of dowry. That the respondent has left the matrimonial house and she has refused to return from her parental house to live with the appellant.

4. Respondent/wife has denied the allegations and she has pleaded that the appellant and his family members teased and pressurised her for the demand of motor-cycle, T.V. etc. The respondent has denied that she gave the threat of committing suicide. Respondent has averred that the appellant and his family members have tortured her and treated her with cruelty. It is further alleged that the appellant has filed this application for divorce on the ground of desertion before the expiry of the statutory period of two years.

5. The learned Trial Court had framed nine issues and the statements of the appellant and his witness Dhanraj (A.W. 2), Shivshankar (A.W. 3), Jayram (A.W. 4), Babu Rao (A.W. 5), Chandra Shekher Deshmukh (A.W. 6), Mitthu (A.W. 7), and Santosh Rao (A.W. 8) were recorded and from the side of the respondent the statements of Indubai (NAW 1), Deorao (NAW 2), Ramu (NAW 3), and Bhimrao

(NAW 4) were recorded. The learned Trial Court has held that the allegations of cruelty and desertion by respondent/wife are not proved. The learned Trial Court has dismissed the petition holding that the appellant has treated the respondent with cruelty for the demand of the dowry.

6. The appellant has assailed the findings of the learned Trial Court on the ground that the evidence produced by the appellant is not properly assessed and the findings are against the evidence on record. The appellant has prayed that a decree of divorce be passed of dissolving the marriage between the parties.

7. The appellant Gulab Rao (A.W. 1) has stated that after two months of his marriage his wife has refused to perform the domestic work and she has declined to work of cultivation in the field. The allegations of the appellant that his wife had refused to work a domestic work and the work of cultivation on the field, are false because even the witness of the appellant, Shivshankar (A.W. 3) has admitted in Para 4 of his cross-examination that she has seen the appellant and his wife working together in the field and he has also seen her doing the domestic work at the house of the appellant. Jayrao (A.W. 4) has also admitted in Para 4 of his cross-examination that his house is near to the house of the appellant and he saw Indu Bai working in the field of the appellant. Consequently, it is clear from the admission of the witnesses of the appellant that the allegations of the appellant that the respondent had refused to do the domestic and cultivation work are not proved.

8. Gulab Rao (A.W. 1) has stated that his wife had refused to perform the sexual act and she used to extend the threat that if she will be compelled for intercourse then she will commit suicide either by taking the Sulphas tablets or jumping in the well. Dhanraj (A.W. 2) has stated that Indu Bai used to say that somebody, if will pressurise her then she will commit the suicide and make the police report against her husband and his family members of demanding the dowry. From the statement of Dhanraj (A.W. 2) it is not clear that at what time and place the respondent has threatened to commit the suicide and entangle the appellant in the dowry case. The appellant made the report Ex. P/1 on 26.1.1996 against the respondent in the Police Station. From the perusal of the report Ex. P/ 1, it is clear that the appellant

has not stated therein that the respondent had threatened to commit the suicide or she used to harass the appellant or his family members by extending the threat lodging the false case of dowry. Consequently, this allegation of the appellant is not proved that the respondent/wife used to extend the threat to him of committing the suicide or of roping the appellant and his family in the false case of demand of dowry.

9. Baburao (A.W. 5), Chandra Shekhar (A.W. 6), Mitthu (A.W. 7), and Santosh (A.W. 8) have stated that the father of respondent Indu Bai had said to the appellant that he will not send his daughter to the house of her husband. From the perusal of the petition it is clear that the respondent has left the matrimonial home after 4.2.1995. The appellant has filed this petition within two years i.e. 7.2.1996. Consequently, it is clear that the petition filed for divorce on the ground of the desertion is pre-mature. However, from the statement of respondent Indu Bai and her witnesses Deorao and Ramu it is clear that the appellant used to physically assaulted his wife in order to get the T.V., Sofa-set, etc. in the marriage. The learned Trial Court has rightly believed the statement of the respondent and her witnesses to hold that the appellant ill-treated his wife on account of the demand of dowry. Consequently, under Section 23(1)(b) of the Hindu Marriage Act the appellant is not entitled to get the relief of divorce on the ground of desertion as he is guilty of committing the wrong of assaulting his wife for dowry.

10. The appeal is without any merit and is hereby dismissed. Parties are directed to bear their own costs on the appeal.