

Devendra Sharma Vs. Sandhya

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Court : Madhya Pradesh

Decided On : May-20-2006

Reported in : AIR2007MP103

Judge : S.L. Jain, J.

Appellant : Devendra Sharma

Respondent : Sandhya

Advocate for Pet/Ap. : Shri. A.K. Choubey

Disposition : Appeal dismissed

Judgement :

S.L. Jain, J.

1. Invoking appellate jurisdiction of this Court under Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') appellant/ plaintiff has filed this appeal challenging the legality, validity and propriety of the judgment and decree dated 8-12-97 passed by First Addl. District Judge, Raisen, in Matrimonial Case No. 44-A/94.

2. The facts which led to filing of this appeal may be shortly narrated thus; appellant filed a petition under Section 12(1)(d) of the Act for declaring the marriage solemnized between him and respondent as void by a decree of nullity

on the ground that respondent was at the time of marriage pregnant by some person other than the appellant stating that the marriage between the parties was solemnized as per Hindu rituals on 5-5-92. After the marriage the respondent stayed at her marital home for few hours and after customary Pooja of Goddess without consummating the marriage she returned to her parental home alongwith her brother. She was brought back to her marital home on 6th July, 1992. On that day the parties to the marriage for the first time came in close contact with each other and slept together. On that day because of some abnormal behaviour of respondent the appellant suspected that respondent is pregnant, therefore, without consummating the marriage, the appellant took the respondent for her medical examination to New Bhopal Hospital, where she was examined by the doctor on 24-7-92 and it was detected that the respondent was having a pregnancy of 12 weeks.

3. The appellant also averred that with the consent of respondent her pregnancy was terminated and thereafter she was advised for bed rest for three weeks. During this rest period, medicines were given to the respondent as per prescription of the doctor. Thereafter the respondent was sent to her parental home at Mhowranipur and since then the respondent was living at her brother's place. The appellant also stated that in the application that at the time of marriage, appellant or his parents were ignorant of the fact of pregnancy. It was also stated that marital intercourse did not take place between the parties after the detection of pregnancy.

4. The allegations made in the petition were controverted by the respondent stating that after the marriage she came to her marital home on 6-5-92. After the traditional Pooja of Goddess, on 6-5-92 between 7-5-92 to 25-5-92 she lived with the appellant. The marital intercourse took place number of times during this period. On being enquired she also informed the appellant that she had the menstruation on 1-5-92. During stay at her marital home, she sent letters to her parents. On 26-5-92 she came to parental home alongwith her brother. Thereafter on 5-7-92 she was again brought back to her marital home by the uncle and father of appellant. This time the behaviour of the family members of the appellant towards her rude. She was subjected to cruelty for or in connection with demand

for dowry. She learnt that as the adequate dowry was not given in her marriage the appellant desires to marry again.

5. Respondent also pleaded that when she gave the good news of her pregnancy to her in-laws she was told that her husband himself is a child. They took her for medical check up and against her wishes injections were given to her and the pregnancy was terminated. She denied that the pregnancy was terminated with her consent. Respondent stated that she has been deserted without any justifiable ground.

6. On the pleadings of the parties, the Trial Court framed three issues and recorded the findings that the appellant has failed to prove that respondent at the time of marriage was pregnant by some person other than appellant and dismissed the petition.

7. It is this judgment and decree of the Trial Court which is the cause of grievance of the appellant.

8. I have heard Shri A.K. Choubey, learned Counsel for the appellant. None appeared for respondent at the time of hearing of the matter.

9. Learned Counsel for the appellant submitted that the Trial Court committed grave error in discarding the evidence led by the appellant and believing the evidence led by the respondent.

10. Appellant Devendra Sharma (P.W. 1) has stated that after solemnization of the marriage respondent came to his house and on the next day after the Pooja of Goddess she returned to her parental home alongwith her brother. Thereafter on 6-7-92 his uncle and father brought her back to her marital home. Honeymoon was celebrated and the respondent lived with appellant for 2-4 days but because of the abnormal behaviour of the respondent he suspected that respondent is pregnant, therefore, she was taken to New Hospital, Bhopal for medical checkup. After the examination Dr. R.N. Sharma found that respondent was having a conception of 12 weeks. Having learnt this fact appellant got the pregnancy terminated and thereafter the marital intercourse with the respondent did not take place.

11. Jamuna Prasad (P.W. 2) father of the appellant has also stated that after the solemnization of the marriage respondent came to her marital home only for a day and after Pooja of Goddess she returned to her parental home. Thereafter she was again brought back to her marital home and at that time she stayed with them for 20-22 days. Shiv Narain and Vinod Kumar who are the relatives of the appellant were also examined. They also stated that when respondent came to her marital home, she stayed only for a day and returned to her parental home after performing the Devi Pooja and thereafter came again after two months and lived for sometime. There is material contradictions in the evidence of the appellant.

12. Appellant Devendra has stated in his cross-examination that as per custom after Devi Pooja, husband and wife can come in each other's contact. Vinod Kumar (P.W. 5) has stated that on 6- 5-92 itself the Pooja of Goddess was performed, another witness Narmada Prasad (P.W. 4) who is the neighbour of the appellant has stated that on the day when the marriage party return, Devi Pooja was performed. Thus, the statement of the appellant and his father that Devi Pooja was performed on 7-5-92 cannot be believed. Devi Pooja was performed on 6-5-92 thereafter marriage could have been consummated. Therefore, the Trial Court has rightly disbelieved the evidence of the appellant.

13. On the contrary respondent and his witnesses have stated that immediately after the marriage she lived with her husband from 6-5-92 to 25-5-92. During this period marital intercourse took place between her and respondent. This evidence is corroborated by Shankerlal (D.W. 2). This evidence is further corroborated by letter (Exh. D-1), which reveals that the letter was sent from Village Pipariya and it bear the seal of post office. This letter reached Mhowranipur on 20-5-92. Another letter (Exh. D-2) also corroborates the evidence of respondent. Moreover, the doctor who examined the respondent regarding conception could not be produced as witness nor the documents on the basis of which certificate (Exh. P-1) was issued were produced. No cogent evidence is available on record to the effect that the pregnancy of the respondent was found to be of 12 weeks.

14. Appellant Devendra himself has admitted that the honeymoon was performed on 7-7-92 and thereafter respondent lived with him for 10-12 days and during this

period marital intercourse took place. The witness has also admitted that only after 1-2 days of the honeymoon he could learn that respondent is pregnant. If he had learnt only after 2 days of the honeymoon about the conception, he would not have consummated the marriage further but according to him admittedly they had marital intercourse for 10-12 days.

15. In a petition for nullity of marriage on ground that respondent was pregnant by some other person, matter to be proved are (1) that the appellant was at the time of marriage ignorant of the facts alleged, (2) that the proceedings have been instituted within one year from the date of marriage (3) that marital intercourse with consent of appellant has not taken place since discovery of existence of the pregnancy.

16. In view of the evidence discussed above, it cannot be said that at the time of marriage the respondent was pregnant by some other person than the appellant. There is evidence that the aborted pregnancy could have been caused by the appellant. Even after becoming aware of the pregnancy the appellant performed marital intercourse with the respondent and this conduct makes him disentitle from decree of nullity. The satisfaction which the Court has to arrive at in proceedings under the Act must be satisfactory beyond all reasonable doubt. In such cases it shall be just to seek more cogent and convincing reason than one which may only be sufficient to create doubt. The appellant can be allowed to succeed only after he proves beyond reasonable doubt that the respondent was pregnant by some one else at the time of marriage. The onus is on the appellant to prove about the pre marital pregnancy. Appellant has failed to prove that immediately after the marriage he had no access to the wife. From the evidence of respondent it is established that marital intercourse took place immediately after the marriage. The Trial Court believed the evidence of respondent. I do not find any reason to take a contrary view. The appellant has failed to prove that immediately after the marriage he had no access to the respondent and did not live with the wife. The medical evidence given by the appellant also does not establish that respondent at the time of marriage was pregnant.

17. The Trial Court has analyzed the factual material properly. The finding of the Trial Court is based on proper appreciation of the evidence and the same cannot be lightly brushed aside by the Appellate Court. An Appellate Court should always bear in mind that if the finding of the Trial Court is reasonably acceptable on evidence on record, it should not be interfered with normally except for very strong reasons.

18. For the foregoing reasons, I am of the view that the finding of the Court below is impregnable. No case for inference in this appeal is made out. The appeal is sans merit and the same is dismissed.

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