Manjit Kaur Vs. Surinder Singh

Manjit Kaur Vs. Surinder Singh

SooperKanoon Citation : sooperkanoon.com/610269

Court : Punjab and Haryana

Decided On : Aug-20-1993

Reported in : AIR1994P& H5; I(1994)DMC469; (1994)106PLR241

Judge : G.R. Majithia and; N.K. Sodhi, JJ.

Acts : Hindu Marriage Act, 1955 - Sections 12, 13 and 28

Appeal No. : First Appeal of Order No. 126-M of 1991

Appellant : Manjit Kaur

Respondent : Surinder Singh

Advocate for Def. : Mr. Anupam Gupta, Adv.

Advocate for Pet/Ap. : Mr. M.L. Saggar, Adv.

Judgement :
ORDER

G. R. Majithia, J.

1. This first appeal under Section 28 of the Hindu Marriage Act, 1955 (for short, the Act) is directed against the judgment and decree of the Matrimonial Court at Amritsar dismissing the petition filed by the appellant-wife for annulling the marriage by a decree of nullity with the respondent husband under Section 12 of

the Act.

2. The facts as pleaded in the petition under Section 12 of the Act are as follows:--

The parties to the lis were married on April 20, 1986 at Amritsar that the appellant wife (hereinafter the wife) stayed at the house of the respondent husband (hereinafter the husband) till April 27, 1986 that during this period, the husband tried to consummate the marriage, but failed that on April 27, 1986, the wife returned to her parents house, that on persuasion by her parents, the wife again came back to the matrimonial house on May 3, 1986 and remained there till June 22, 1986; that during this period also, the husband unsuccessfully tried to consummate the marriage, that the wife was taken to the parents house by her father on June 22, 1986; that the wife was again pursuaded to join the company of her husband on July 12, 1986 and during that visit also the husband could not consummate the marriage.

3. The wife filed the petition under Section 12 of the Act in the matrimonial Court at Amritsar on January 24, 1987. The husband denied the allegations made by the wife in the petition.

4. On the pleading of the parties, following issues were framed by the Matrimonial Court :--

1. Whether Surinder Singh, respondent, is impotent OPP.

(2) Whether the marriage between the parties has not been consummated owing to impotence of the respondent Surinder Singh? OPP

3) Whether the petition is not legally maintainable? OPP

4) Relief.

5. Issues Nos. 1 and 2 were disposed of together and were answered against the wife. Issue No. 3 was not pressed in view of the findings under Issues Nos. 1 and 2, the petition was dismissed.

6. The Matrimoninal Court relied upon the report Exhibit R.W. 2/1, which was proved by R.W. 2 Dr. S.P. Singh Sohal to conclude that the husband was not impotent at the time of marriage. He was also influenced by the statement of Dr. (Mrs.) Gian Kaur, P.W. 1 who, after examining the wife, had opined that her hymen had been ruptured.

7. When the case came up for hearing before us, we found that the medical evidence on which the Matrimonial Court had relied upon was not only wholly unsatisfactory but unworthy of credence. In the interest of justice, by bur order dated December 9, 1992, we directed that the husband be examined by Professor (Dr.) S.K. Sharma, Head of the Urology Department, Post Graduate Institute of Medical Education and Research, Chandigarh (P.G.I., for short). The husband was examined by Dr. S.K. Sharma as directed by us. He submitted his report dated January 7, 1993, Ex. C.W. 1/1. Learned counsel for the parties made a statement in Court on July 7, 1993 that they did not want to file any objection to the report submitted by Dr. S.K. Sharma. However, we thought it proper to examine Dr. S.K. Sharma as a Court witness. He was examined on July 13, 1993. We think it useful to reproduce his statement in extenso:--

'I joined as a Lecutrer in the Department of Urology at the Postgraduate Institute of Medical Education and Research, Chandigarh (PGI) in the year 1975. I was selected and appointed as Assistant Professor in the sameDepartment in July, 1983 and headed the said Department in the same capacity from July, 1987 to May, 1988. I was selected as Professor and Head of the Department of Urology in May, 1988, in which capacity I have, been continuing. I have about 112 scientifc publications, more than 60% of which are in the foreign journals. I have several awards and distinctions conferred by the Urological Society of India and also by the National Academy of Medical Sciences of India which, in recognition of merit, conferred on nie the Fellowship of the National Academy in the year 1992. Many of my scientific publications in the reputed international journals have been reproduced in standard text, books of Urology and Radiology like the, Bible of Urology, the Campbell's Urology and the Operative Urology by James Glenn, besides many other text books, I am at present a Member of the Governing Council of the Urological Society of India, President-elect of the North Zone

Chapter of Urological Society of India and President of Urology Urolithiasis Society of India, besides being a Member of the Association of Surgeons of India and International Urological Society. I have been teaching the Post-Doctoral Fellows in Urology for the last over 20 years.

The report, Exhibit C.W. 1/1, along with the forwarding letter, Exhibit C.W. 1/2, with respect to the medical examination of Shri Surinder Singh, respondent, was prepared by me and sent to this Court in pursuance of the directions given to. me by this Court as per order dated December 9, 1992. The investigation and evaluation continued for several days and the final report, Ex. C.W. 1/1, was prepared after compilation of the results. Test at serial No. 5 of the report, Ex. C.W. 1/1, reads thus:--

5. 'PIPE' Test with 60 mg. of Papaverine:

Penile lengthening and Turgidity achieved within 10 minutes, persisted for 15 minutes following injection. Rigidity -- not satisfactory.

(At 10 minutes - Intracavernous pressure 40 Cms of H2O

(Normal > 80 mm of Hg

> 110 Cms of H2O

Penile Dimensions :

State of Penis

Length

Mid shaft Girth

Flaccid

9 Cms

8.5 Cms

Erect

14 Cms

11Cms'

(induced with Papaverine

Q: Please explain the above.

Ans: Before the availability of the 'PIPE' Test, it was very difficult to opine about the potency or impotency of a male. The PIPE test along with many other investigations became available/ known to the medical sciences in mid eighties for the 'evaluation of impotency. This test is a sure test to evaluate the impotency of a male. Normally, when an allegation of impotency is made, we resort to this test. After injecting 30 to 60 mgs. of Papaverine intracavernously, the erection occurs in about three to five minutes' time and it achieves its maximum rigidity, i.e., full erection, after about ten minutes and it sustains for a period of ten to thirty minutes. Normally, if the intracavernous pressure at the height of full erection should be caused up to 90 cms to 110 cms of water, it should be compatible with penetration and sexual inter-course. In this particular individual, namely, Shri Surinder Singh, theintracavernous pressure reached only up to 40 cms of water, which was far below the pressure and the rigidity required for sexual intercourse. With this rigidity and the intracavernous pressure, it is not possible to have a sexual intercourse with a virgin. With the erection mentioned against test No. 5 of the report, Exhibit C.W. 1/1, the respondent will not be able to perform sexual intercourse. In the medical parlance, we would call this impotence. The respondent's case is of this type of impotence.

Q: Whether the h'ymen of a female can be ruptured only by sexual intercourse?

Ans: No. It can be ruptured in situations like girls who are athletes, driving bicycles or even those who are practising masturbation for sexual gratification or satisfaction.

There could also be situations when hymen of a female may be intact in spite of a person having sexual intercourse regularly.

Q: Please read the report. ExhibitR.W. 2/1 (exhibited before theMatrimonial Court), and tell us whether after reading the same, any firmopinion can be given about thepotency of the respondent? Thereport reads as under:--

'Physical development normal. Secondary sex characters were normal. Development of primary sex characters was normal. There was no history of acute or chronic illness, local injury or no evidence of addition or operation.'

Ans: On the basis of the report, Exhibit R.W. 2/1, it is not possible to opine that Sh. Surinder Singh, respondent, is potent.

Q: What can be the basis of this report?

Ans: On the basis of the report, Exhibit R.W. 2/1, no medical man can opine that the respondent is potent.

Q: Can you state that the report, Ex. . R.W. 2/1, has any basis?

Ans: The report appears to have been made only on physical examination and appearance and that is no basis for determining the potency of a male.

Cross-examination by Mr. M. L. Saggar, Advocate, counsel for the wife -- appellant:

Nil (Opportunity given).

Cross-examination by Mr. Anupam Gupta, Advocate, counsel for the husband-respondent:

The term 'Potency' is used to connote normal erection of the penis sufficient for sexual-intercourse.

Q : What is the optimum erection of penis which is sufficient for having sexual intercourse?

Ans: Normal erection sufficient for sexual intercourse means the stage of orgasm. The intracavernous pressure at the 'bight of that erection should be between 90 cms to 110 cms of water. Anything below that would be described as not compatible with the ability of a male having sexual intercourse.

Q: How do you define 'orgasm'?

Ans: This is defined as the height of maximum erection of the penis at which ejaculation is about to commence.

Q: Is the 'PIPE' test conclusive?

Ans: As of today, it is conclusive.

Q: Can you assess the erection manually? Is manual assessment of erection operative in medical science?

Ans : It is very very rough and inadequate form of assessment. The exact status can be ascertained only after these pharmacological tests. The sophisticated pharmacoloigcal tests which we do conduct at the PGI are not available at any other place in this part of the country other than the P.G.I.

Q: Are these technological methodologies available at the peripheral medical colleges?

Ans: These newer technological methodologies may not be available at the peripheral medical colleges.

Q: How the doctors in the peripheral medical institutions conduct tests about potency?

Ans: In the absence of these sophisticated test, most of the assessment goes on history and examination plus if somebody can simulat erection while practising masturbation. Otherwise, there is no other way to confirm.

Q: Could the report, Exhibit R. W. 2/1, be given on the basis of manual examination?

Ans: The doctors at Amritsar have beenable to give their assessment aboulpotency in report, Exhibit R.W. 2/1,by any means other than those statedto have been employed by them.

Q: Were the doctors at Amritsar acting within the limitations or could take recourse to safe methods?

Ans: The medical examination report of these doctors makes no mention of the status of erection anywhere in the report and if they were unable 16 do so, they should have referred the patient to some specialised Surgeon.

Q: Is any Penile Prothesis operation being carried out in the P.G.I, or anywhere in the country?

Ans: This particular operation of fixing Penile Prothesis is being carried out in many centres in the country, including the P.G.I.

Q: Have you performed any Penile Prothesis operation?

Ans: Yes, I have performed numerous such operations.

Q : What is the quality of sexual function achieved after the Penile Prothesis operation?

Ans : If both the partners are agreeable and understanding each other, then the sexual gratification/ satisfaction is 100%.

Q: Whether this particular procedure could have been carried out in the case of Shri Surinder Singh, respondent?

Ans: Yes, It could have been carried out, but the best results are obtainable only in those patients who are psychologically motivated to accept this. The cure of impotency is a distressing subject, but the newer modalties available now have openedup a new vistas for these depressed patients. The patient has to be psychologically prepared/motivated to accept this way of achieving erection in sexual intercourse, because this involves taking resort to either self-injections or Penile Prothesis and in such a desperate situation, many of the patients would

jump at the idea of having these options, whereas others may accept with lot of difficulty.

Q: If the respondent had this Penile Prothesis, could his impotence have been cured?

Ans : Yes, it could be cured.

Q: Does the subject of hymen fall within the province of Urology?

Ans : In the last decade or so, a very close co-operation between the Specialities of Urology and Gynaecology has come up. A newer Sub-speciality has come up, which is called 'Gynaecological Urology'. We work in very close co-operation with the Gynaecologists and all such opinions are within the jurisdiction of the Urologist.

Q: At page 355 of the Modi's Medical Jurisprudence and Toxicology, Twenty-first Edition, it is stated thus:--

'Besides the act of coitus, the hymen may be ruptured by-

I. An accident e.g. a fall astride a projecting substance, fence or while playing a see saw.

The plea that is usally brought forward by the defence pleader in a case of alleged rape in mofusil courts is that the hymen was ruptured by an accidental fall on the sharp and obliquely cut remnant of a stem of an Arhar plant projecting 5 or 8 cms above the ground in field. Modi had known it lacerating the sole of the feet having perpetrated through a shoe, but rupture of the hymen alone in this manner is highly improbable. Again, forcible separation of the thighs will not rupture the hymen, especially in children unless perinaeum is ruptured. Because of the situation of the hymen, its rupture is not possible by riding, jumping, dancing etc.'

What do you say?

Ans: Hymen might be ruptured in the case of a girl sitting on a bicycle with upper part of the projecting seat which comes between the thighs.'

8. Dr. S.K. Sharma. is a reputed Uro-iogist. We have been impressed, by his thorough mastery on the subject. He, after subjecting the husband to 'PIPE Test', came to the conclusion that the husband could not perform sexual intercourse and in the medical parlance they would call this as impotence. With regard to report, Ex. R.W. 2/1, he stated that on the basis of that report it could not be held that the husband was potent. According to him, no medical man relying upon that report could opine that the husband was potent. In fact, the report, Ex. R.W. 2/1, cannot be relied upon for the reason that Dr. S.K. Sharma has stated that the assessment of potency given in the. report cannot be made by means adopted by the Amritsar doctor. We have no doubt that the report, Ex. R.W. 2/1, was procured by the husband. No reliance can be placed upon it. The Matrimonial Court was influenced by wholly irrelevant consideration that the hymen of the wife was ruptured and from this fact it drew an inference that the husband was not impotent. Dr. S.K. Sharma is candid in his statement that the hymen of a female can be ruptured in situations like where the girls who are athletes, driving bicyles or even those who are practising masturbation for sexua-tion gratification/ satisfaction. He further stated that there could also be situations when hymen of a female may be intact in spite of a peron having sexual intercourse regularly.

9. The wife appeared as her own witness as P.W. 1 and stated that the husband could not consummate the marriage though she lived with him for more than two weeks. The husband made attempts to consummate the marriage, hut those proved abortive. She is the best person to tell about these things and there are no extenuating circumstances to cast doubt about her version. Her evidence received ample corroboration from the medical evidence. We have not expressed any opinion on the other evidence of the parties since it is not relevant. The medical evidence conclusively establishes the case of the wife. Apart from this, the version of the wife rings true. She is a Post-graduate and was a student of her husband's father, who is the Head of English Department of Khalsa College, Amritsar. The husband is also a Postgraduate in English and is employed as a Lecturer. Theirs was an arranged marriage. The wife would not have withdrawn from the company of her husband if the circumstances had not compelled her to do so. The insinuation by the husband at the trial that the wife was having illicit relations with her brother-in-law appears to be an after-thought and due to frustration to malign

her. The allegation that the wife had illicit relations with her brother-in-law was not made in the written statement, but was made at the. trial. This further shows that the husband has tried to improve his version at the behest of legal ingenuity; otherwise there is no truth in it.

10. The opinion of Dr. S.K. Sharma is based upon 'PIPE Test' conducted on the husband. He is categoric that as up to date it is a conclusive proof of potency or impotency of a male. Facility of this test is available at the P.G.I. and not at any other station. The evidence of Dr. Sharma, conclusively proves that the husband was impotent at the time of marriage and there is no escape from the conclusion that the wife has succeeded in establishing that the marriage remained unconsummated owing to the impotence of the husband.

11. For the reasons stated above, the appeal succeeds, the judgment and decree of the matrimonial Court dated August 8, 1991, is reversed and the marriage of the parties to the lis is annulled. The wife's petition under Section 12 of the Act succeeds. However, we leave the parties to bear their own costs.

12. Petition allowed.