

Vijav Kapur Vs. Neelam Kapur

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Court : Delhi

Decided On : Aug-13-1982

Reported in : 1983RLR167

Judge : N.N. Goswamy, J.

Acts : Hindu Marriage Act - Sections 13

Appeal No. : First Appeal No. 57 of 1981

Appellant : Vijav Kapur

Respondent : Neelam Kapur

Advocate for Pet/Ap. : O.N. Vohra and; R.S. Kela, Advs

Judgement :

N.N. Goswamy, J.

(1) Public Witness .2, Dr. D.M. Shreshta, Junior Resident, Aims, Deptt. of Psychiatry, stated that the respondent was admitted in the hospital on 11.2.1980 and discharged on 21.3.1980. She was under his treatment for the entire period. At the time of discharge, his diagnosis was schizophrenia (catatonic). All the progress report and treatment report has been written by him. Schizophrenia is a mental disease. The disease can relapse if the patient does not continue the treatment. As per his record she had suffered some sort of mental disease even

prior to this about four or five years back. In cross-examination, he stated that besides him, there is a senior doctor by the name of Dr. Anandi Lal, M.D. The diagnosis of the junior doctor is shown to the senior doctor and if the senior doctor agrees the treatment is started. According to him, in the present case, the senior doctor had not differed with his opinion. He further stated that there are four or five types of Schizophrenia, the one from which the respondent was suffering was catatonic which means there are all the symptoms of abnormal behavior, disorder of thinking and disorder of emotion and gradual deterioration in the social behavior. When the respondent was brought to him, she was in acute stage. He further stated that there are more serious kinds of schizophrenia like paranoid, hebephrenic and simple. The schizophrenia catatonic is curable if the patient is treated very early and does not have many relapses. He admitted that the respondent was treated at the early stage i.e. on the second attack of illness. He was unable to tell exactly regarding the illness at the earlier occasion. According to him, the respondent had improved but he could not say if the improvement was remarkable. After the discharge he found that some times her mood was not appropriate and her talk was irrelevant but gradually she improved. While explaining the gradual improvement he stated that he did not find any disturbance of thinking, emotion and gradual deterioration in social behavior of the patient. He opined that when these symptoms disappear from the patient, the patient becomes normal. On 10.4.1980 when the respondent came up for follow up he found her loosening of association which means irrelevant talk, incongruency i.e. inappropriate emotion and after that he did not see her because there was strike of doctors. On 8.5.1980, the respondent was examined by Dr. Chawla after her discharge. He could not say if the remarks and his observations disappear in the report of Dr. Mrs. Chawla, but he could not find them in her report. He admitted that a doctor treating the patient subsequently keeps in view the previous report and diagnosis. The report dt. 29.5.1980 is in the hand of Dr. Mrs. Chawla wherein it is recorded that the patient is completely normal.

(2) Public Witness .3 is Dr. S. Dayal from the Deptt. of Psychiatry, Willingdon Hospital, He brought the record of E.C.T. of the month of May, 1974 pertaining to the respondent. According to the record, the respondent was given E.C.T. which is given for schizophrenia, acute mania and suicidal cases. He also brought the

O.P.D. slip dt. 25.5.1982 of the hospital pertaining to the respondent. Therein she was diagnosed as per record slip for schizophrenia. In cross-examination, he stated that he had no personal knowledge about the respondent and he did not treat her. He also could not say as to what kind of schizophrenia the respondent was suffering from. He stated that in their hospital they do not use the term 'curable' for a patient of schizophrenia, but use the term 'free from symptoms'. He however, could not tell from the record whether the patient was free from all these symptoms but he gave the dates when E.C.T. was given to the respondent (-).

(3) Public Witness .4 is Dr. R.C. Jindal, Head of the Deptt. of Psychiatry, Safdarjang Hospital. He only produced the slip of the respondent wherein no diagnosis is mentioned. He stated that the medicines prescribed could have been prescribed for any of the several mental disorders. In cross-examination, he stated that the respondent was an out-door patient and was not admitted in the Department. He was unable to say from the prescription as to for which specific disease the respondent was suffering and whether the said disease was curable or not.

(4) R.W.1 is Dr. Smt. K.K. Saharan from Dr. B.L. Memorial Hospital, Pusa Road; She stated that the respondent was admitted in their hospital on 1.2.1980 and another patient by the name of Kusum Lata was also admitted. The said Kusum Lata delivered a child on 30.1.1980 and the respondent delivered the child on 1.2.1980 The child of Smt. Kusum Lata died on 4.2.1980 in the Children Ward. Kusum Lata and the respondent were in the Maternity Ward. She could not say exactly as to what was the result of the death of Kusum Lata's child but she stated that normally they were all crying. It was brought to her notice that the respondent was behaving abnormally in the evening of 4.2.1980 but next morning the respondent was better. The respondent was having slightly high blood pressure on 4.2.1980 also and was up-set on the evening of 4.2.1980. In cross-examination, she stated that the respondent remained in hospital for four days. At the time of admission, the respondent was quite normal. From the record, she stated that the child of the respondent was sent to the respondent on 3rd and the child remained with the respondent till her discharge. The Children Ward is separate from the Maternity Ward. She further stated that the respondent was treated by them for

purperal psychosis to sedate her so that she became normal. She further stated that Kusum Lata and the respondent were in the same ward.

(5) R.W.3 is Dr. Prem Lata Chawla, Asstt. Professor, A11MS. She produced the hospital record and stated that she was one of the doctors attending on the respondent. She further stated that the respondent was actively ill as per the record from a few days prior to 11.2.1980 up to some time before 8.5.1980. She has proved the Opd card of the respondent and the Opd ticket which is Ex. PW3/1. She stated that the patient was diagnosed to be suffering from schizophrenia (catatonic) at the time of her admission. The respondent had told her that she had suffered this disease called schizophrenia before marriage also. The record also shows that the respondent suffered similar illness five years prior to her marriage. She opined that by modern methods of treatment the disease of schizophrenia is manageable. There is controversy regarding the complete curability depending upon the duration of the disease, so much so, when the patient is ill for less than six months, the disease is considered to be curable. She further opined that in such cases they do not even call it schizophrenia. However, in cross-examination she stated that opinion given by her that the patient had become normal is not conclusive inasmuch as the patient may suffer from the disease at any later stage.

(6) This is the entire medical evidence on record. Along with this medical evidence, it is necessary to notice the remarks on the hospital record which were made by R.W.3 Dr. Prem Lata Chawla who was the senior most doctor who attended on the respondent. The remarks dated 29.5.1980 are to the following effect :

'Patient is completely normal. It seems that the initial diagnosis of schizophrenia might not be correct. In view of the first attack she had before marriage she might be Mdp manic phase. Due to pre-dominance of paranoid ideas it was erroneously diagnosed as schizophrenia.'

(7) The learned counsel for the petitioner referred to Modi on jurisprudence in order to elaborate the symptoms etc. of the disease schizophrenia. He referred to certain decisions on the question of schizophrenia. In my opinion, it is not necessary to deal with those decisions or commentary for the simple reason that

we have on record enough medical evidence dealing with the instant case. Each case, in my opinion, has to be decided on its own facts. For example, the learned counsel referred to the case of Inderjit Singh v. Amarjit Kaur, 1978 Hlr 781. In that case, it was found as a fact that the treatment continued for about four years i.e., from 1972 to 1976. The patient was admitted to mental hospital and according to the medical evidence she was found to be a person of unsound mind. Similarly in the case of S.S. Sabharwal v. Mohander Kaur, Fao 208 of 1980, D./26.11.80 it was found that apart from the medical evidence it was clear from the respondent's admission that she could not live alone in the house nor could reach her house on her own. The learned Judge also talked to the respondent and found that she was guided by her relatives and made to sit down by them. After some time she made some noise and moved from one place to another in the Court room and then went out. She was brought in again and on speaking to her in chamber, she told the learned Judge that she wanted to be left alone and does not wish to live with the appellant. She knew that she was married but did not know when she was married. She stated that she wanted to stay with her parents and not to be disturbed. She also stated that they were cruel to her and the cruelty consisted of making her to do some house work. The learned Judge further noticed that she spoke incoherently to realise that she had been brought to Court. According to her, her parents wanted her to make the statement that she would like to go back and live with the husband but she did not want to make this statement. She appeared lethargic, restless and was talking with great effort.

(8) The other cases cited by the learned counsel were also distinguishable on facts and are of no help in the present case. From the evidence in the present case it has to be seen whether the case can fall within the requirements of section 13(i)(iii).....

(9) The term schizophrenia was introduced in 1911 for the first time. It literally means disintegration of mind. A bare reading of the provision would show that a mere apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent is not enough. He must show that the respondent has been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder of such a kind and to such an

extent that the petitioner cannot reasonably be expected to live with her. From the medical evidence and from the observation of the learned trial Judge who had the occasion to see her in the witness box, the irresistible conclusion is that the case is not covered by Section 13(i)(iii) of the Act. The observations of the learned trial Judge are to the following effect-

'Above all when the respondent appeared as Rw 2 she made a very consistent and intelligent statement. At no place, she faltered, giving out an evidence of an abnormal mind. She was exact in giving number of the house, the names of the persons, the marks she obtained in her examination and the year in which she passed the examination. She even correctly summed up the figures. She was subjected to a lengthy and searching cross-examination, has not given away anything that she was not serious to the question posed to her.'

(10) Undoubtedly, the respondent was under treatment at Aims and the Senior Most Doctor who attended on her, was Dr. Mrs. Chawla, Rw 3. From the noting of the said doctor in Ex. Rw 3/1 reproduced above, it is clear that she was doubtful even about the disease of the respondent. She opined that the initial diagnosis of Schizophrenia was not correct. It is true that the respondent had a similar illness five years prior to her marriage also but according to the medical evidence, there is nothing to show that the said illness was diagnosed to be Schizophrenia. In any case, the first illness and the second illness did not last beyond three months or so and in these circumstances, the opinion of the doctors who have appeared as witness has to be accepted that such a case is curable. The last attack suffered by the respondent was in Feb., 1980. It is after two years of that attack that the respondent was present in my court and I had also occasion to talk to her. I did not find anything wrong with her, and it is not the case of the petitioner also that she suffered any such illness after the attack of Feb, 1980.

(11) Even assuming that the respondent did suffer from Schizophrenia, it cannot be said that every type of Schizophrenia is such in which the petitioner cannot reasonably be expected to live with her. Admittedly, Schizophrenia is of four or five types. Though, at one point of time, in the case history, it is stated that the diagnosis was Schizophrenia (catatonic) but in the discharge slip of the hospital

which is on record the diagnosis is only Schizophrenia without mentioning the type. It was held by a Db of this Court in J. P. Sharma v. Shashi Bal , that it is not correct to say that simply because the respondent had suffered from Schizophrenia, the respondent has treated the petitioner with cruelty. Several factors have to be borne in mind before arriving at the conclusion that the petitioner cannot reasonably be expected to live with the respondent.

(12) By merely proving that the respondent is of unsound mind or suffers from disorder, the appellant cannot obtain divorce. Marriage could be dissolved only by proving that the respondent was suffering from some form of mental disorder which was of such a kind or of such an extent that the appellant could not reasonably be expected to live with the respondent. In other words, the appellant must prove that because of such mental disorder it was not reasonably possible to enjoy conjugal life with the respondent. The Court ought to be satisfied that the respondent's mental disorder is of such a nature and of such an intensity that it would not be reasonable to compel the appellant to endure or suffer the same.

(13) Besides the medical evidence discussed above, 1 have the evidence of the appellant himself who appeared as Public Witness 5. Besides deposing to the treatment in the hospitals he stated that the respondent did not have the normal habits and conduct. The respondent did not come before the elders in respectful manner and used to come sometimes in blouse and petti-coat etc. He also stated that the respondent used to unnecessarily laugh and used to talk with the elders sometimes by holding them from hand. He further stated that once in March, 1979 he had taken the respondent to show a film and when they came out of the cinema hall the respondent started laughing with a three-wheeler scooter driver. He went on to say that after coming back from the hospital the respondent stayed with him for about 10-12 days and during this period she gave him a teeth cut on his back when he was sleeping. All these allegations have rightly been disbelieved by the learned trial Judge because the same were not corroborated by any evidence, particularly, when it was not difficult for the appellant to produce his relations before whom the respondent was behaving in the manner indicated. Regarding the teeth cut no such allegation was made in the petition. All these allegations were denied by the respondent when she appeared in the witness box and she

proved her case as was made out in the written statement. She described both the incidents of her mental disorder. According to her, the first time before marriage when she suffered from some kind of mental disorder, it was due to excessive reading just before her examination and the second time it was because of the fact that she thought that her child had died in the hospital and she lost control over herself. The evidence appears to be quite natural and this finds support from the evidence of her father who also appeared as Rw 4.

(14) I have given my careful consideration to the entire evidence adduced by the parties and I am of the opinion that the same is not sufficient for adjudging that the respondent was either of uncurably of unsound mind or was suffering from any mental disorder of such a kind and to such an extent that the appellant-husband cannot reasonably be expected to live with her. From the observations of the learned trial Judge reproduced above, it is evident that the respondent was in complete control of her senses and was able to stand the test of cross-examination properly Various mathematical questions were put to her in the cross-examination and she was able to answer the questions correctly. My view was the same when I talked to her during the argument in this appeal.