

Usha Rani Vs. Sikander Lal

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Court : Delhi

Decided On : Jan-06-1983

Reported in : 1983(5)DRJ232

Judge : N.N. Goswamy, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 12(1)

Appeal No. : F.A.O. No. 108 of 1982

Appellant : Usha Rani

Respondent : Sikander Lal

Advocate for Def. : C.P. Wig, Adv.

Advocate for Pet/Ap. : A.C. Gambhir, Adv

Disposition : Appeal allowed

Judgement :

N.N. Goswamy, J.

1. This appeal by the wife is directed against judgment dated 27-2-1982 passed by the learned Addl. District Judge, Delhi whereby her petition under Section 12(1)(a) of the Hindu Marriage Act, was dismissed.

2. The appellant wife filed a petition for annulment of marriage under Section 12(1)(a) of the Hindu Marriage Act. It is alleged in the petition that the parties were married in accordance with the Hindu Rites on 23-4-1978 in Delhi. Soon after the marriage i.e. on 24-4-1978, the respondent without the knowledge of the appellant left his house and returned after a couple of hours later and informed the appellant that the respondent was not feeling well. The parties continued to attend hospitality of their friends and relatives in the evening on 24-4-1978 and when the relatives and friends left the appellant and the respondent the respondent-husband showed signs of repulsion and wanted to be away from the company of the appellant. The respondent retired to the bed without even uttering a single word to the appellant. At night the appellant was astonished when the respondent made no attempt to complete the marital obligations and the respondent felt shy for the whole night. Next morning the respondent without any rhyme or reason left the house and returned after about four hours. The appellant stayed with the respondent for about a week. All these days the respondent did not try to consummate the marriage and he remained away from the appellant. It was detected by the appellant that the respondent had been suffering from psychological barrier and as such the sexual intercourse was practically impossible. The appellant remained with the respondent up to 2-10-1978. After April 1978 also the appellant remained with the respondent for about a week in a month and then used to return, back to her parents' house. The parents of the appellant kept on telling the appellant that the respondent would be alright very soon and the parents of the respondent also informed the parents of the appellant that they were treating the respondent from a qualified doctor. However, during the entire period the respondent did not try to consummate the marriage and remained away from the appellant. The appellant is continuously living with her parents since 2-10-1978 and neither party has met each other during all this period. It is alleged that since the marriage was not consummated on the date of the marriage nor on the various dates when the appellant remained in the company of the respondent the same is due to the impotency, mental and physical condition of the respondent and as such the appellant is entitled to dissolution of marriage.

3. The petition was contested by the respondent-husband. In the written statement, it was pleaded that no cause of action had arisen to the appellant and as such the petition was liable to be rejected under Order 7 Rule 11 of the Code of Civil Procedure. It was also stated that the petition was not in accordance with the provisions of Section 12 of the Hindu Marriage Act and the Rules framed there under. On merits, the allegations of impotency were denied. It was pleaded that the respondent had consummated the marriage on the first night as also on various other occasions. It was further pleaded that the appellant never made any complaint regarding impotency of the respondent and she was always sexually satisfied and as such there was no occasion to make such allegations. It was further pleaded that the appellant was insisting cohabitation even during the course of manichurian and the respondent rightly refused on the ground that the same was injurious to health. It was also stated that the respondent was always potent and is still in a condition to further carry out his marital obligations.

4. On the pleadings of the parties, the learned trial Court, framed the following issues :--

(a) Does the petition show no cause of action O.P.R. (b) Is the petition not in accordance with the provisions of Section 12 of the Hindu Marriage Act O.P.R. (c) Has the marriage not been consummated owing to the impotency of the respondent O.P.P. (d) Relief.

5. The learned trial Court did not record any findings on issues Nos. 1 and 2 and found issue No. 3, against the appellant. In view of the findings on issue No. 3 the petition was dismissed.

6. In the present appeal also, I am not concerned with issue Nos. 1 and 2 since they were not argued before me by either party and the arguments were confined to issue No. 3.

7. In support of her plea, the appellant has examined only herself as PW 1. She deposed that she was married to the respondent at Delhi in accordance with Hindu rites and customs on 23-4-1978. On 24-4-1978 she went along with the respondent to the respondent's house where the respondent told her that he was

not feeling well. During the day time, the relations came to their house. At night she and the respondent were in a room and the respondent had not done anything to show that their marriage had been solemnised. During the whole of the night the respondent was feeling shy and he did not consummate the marriage. On 25-4-1978, the respondent left the house early in the morning and turned up only after four hours. She stayed with the respondent continuously for one week but there was no consumption of marriage and the respondent did not fulfill the marital obligations. She continued to stay with the respondent at intervals up to 2-10-1978. During the entire period, the marriage was not consummated. In cross-examination, she stated that on the first night of their marriage, the respondent did not even talk to her as if she was stranger to him and had not been married to her. She also stated that they had a room to themselves and no other member of the family was in that room. All sorts of further questions were put to her in the cross-examination but her testimony could not be shaken in any manner and all questions were replied to with specific answers which were in conformity with her pleadings, and the statement. She admitted that during the period, she was staying with the respondent the respondent was treated for appendix tics and for that purpose he was in the hospital for about a month. Thereafter he also fell ill and was treated in other hospitals for few days. She denied the suggestion that the marriage between the parties was ever consummated. She further stated that she was beaten on 1-10-1978 and that is why she left the house on 2-10-1978.

8. Before the evidence of the appellant was concluded, the respondent filed two applications : one for his examination by a medical board and the other for examination of the appellant by a medical board. The application for directing the appellant to undergo medical examination was filed by the respondent on 1-5-1979. The appellant did not file any reply to the said application. However, she made a statement on oath to the following effect:

'I offer myself for medical examination regarding my virginity'.

After the said statement was made, the respondent made a statement and withdrew the application for directing the appellant to undergo medical examination. In view of the said statement, the application was dismissed as

withdrawn, and the appellant was not medically examined. The respondent was examined by a medical board. The medical board found him fit and potent.

9. In support of his case, the respondent also examined Dr. N.P.S. Verma, Associate Professor in Medicine, Maulana Azad Medical College, New Delhi as R.W. 1. He deposed that the medical board had been constituted for medical examination of the respondent as per directions of the Court. He named the doctors who constituted the medical board. He also stated that the respondent was medically examined in his presence. He also submitted the report of the medical board. According to the report, the respondent was fit and potent, and there were no signs of his impotency. In cross-examination, he gave the details of the medical examination and also stated that it is possible that a person may be potent in general and he may be impotent qua his wife. The respondent examined himself as RW 2. He deposed that the marriage between the parties consummated. He also stated the appellant had never complained to him regarding the sexual inability. In cross-examination, he stated that he had performed the sexual intercourse with the appellant on the first night of their marriage i.e. on 23-4-1980. Again said 23-4-1978/80. He further stated that he had cohabited with the appellant on the following nights but he was unable to tell the date, month or the year when he had cohabited with the appellant. He was unable to tell the date, month or the year when he last cohabited with the appellant. He also stated that he never fell ill after his marriage. He admitted that after the marriage, the parents of the appellant used to tell him that he was impotent. He admitted that the parties were living separately since 2-10-1978.

10. This is the entire evidence on record. It is a specific case of the appellant that the marriage was never consummated in spite of the fact that she stayed with the respondent for quite some time and they spent certain nights exclusively in a room. It also cannot be disputed that the respondent had filed an application for directing the appellant to be medically examined regarding her virginity and the appellant had volunteered to undergo the medical examination. In view of the said application, I am of the opinion that it was not necessary for the appellant to volunteer her medical examination since an application had been filed before she closed her evidence. The application was, however, withdrawn much after the

appellant had closed her evidence. therefore, the appellant had no opportunity further to have herself medically examined to prove her virginity. The corroboration can also be gathered from the statement of the respondent himself. He has admitted in cross-examination that the parents of the appellant used to tell him that he was impotent and such an allegation can only be made if the appellant had informed her parents about the impotency of the respondent. Even otherwise it is well-known that a women of middle class in India did not make such allegations unless they are compelled by the circumstances. Women are not happy to face such trial in open Courts, particularly when all sorts of questions are likely to be put in cross examination and they come to the Court only as a last resort. The statement of the respondent does not inspire any confidence inasmuch as he is unable to tell the date, month or the year when he performed the sexual inter course initially or later. The statement is rather vague and indefinite. It is true that by the medical board he has been proved to be potent and capable of having sexual inter course. However, this by itself cannot prove that he is potent qua the appellant also. It is well-settled that a person may be potent in general but he may be impotent qua a particular woman. In the present case, for certain reasons, it appears that the respondent has not been able to consummated the marriage with the appellant and as such he has to be held to be impotent qua her.

11. The learned Addl. District Judge has rejected the plea of the appellant mainly on the ground that it was for her to prove that the respondent was impotent and she should have offered for medical examination. The proposition cannot be disputed but on the facts of this case, it is clear that the appellant had offered herself for medical examination and on her making such an offer, the application which had been filed by the respondent was withdrawn by him and thereafter she had no opportunity to ask for her medical examination. The fact that the respondent had withdrawn the application after she made a statement, goes to show that the respondent knew that the medical report would be against him. In the circumstances, adverse inferences had to be drawn against the respondent.

12. Further admittedly the parties have not lived together after 2-10-1978 and from the allegations leveled by the parties, it is clear that there is no chance of their living together in future also. The efforts, made by the Courts, have also failed and

in these circumstances also there is no idea in keeping the parties tide up in matrimonial ties.

13. For the reasons recorded above, the appeal is allowed and the marriage between the parties is dissolved by a decree of nullity. In the circumstances of the case, the parties are left to bear their own costs throughout.

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