

imarta Devi Vs. Deep Chand and anr.

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Court : Rajasthan

Decided On : May-14-1999

Reported in : I(2000)DMC132; 1999(3)WLC619; 1999(1)WLN644

Judge : V.S. Kokje, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 28

Appeal No. : Civil Misc. Appeal No. 475 of 1994

Appellant : imarta Devi

Respondent : Deep Chand and anr.

Advocate for Def. : Prakash Tatia, Adv.

Advocate for Pet/Ap. : Arvind Samdariya, Adv.

Disposition : Appeal dismissed

Judgement :

V.S. Kokje, J.

1. This is an appeal under Section 28 of the [Hindu Marriage Act, 1955](#) preferred by a wife whose marriage with the respondent was dissolved by a decree of divorce passed on the ground of adultery.

2. The marriage between the appellant and the respondent No. 1 was solemnized on 11.5.1986. The parties separated, according to the respondent husband, on 14.7.90 and according to him he had no access to the appellant after that date. On 16.7.1991 twins were born to the appellant. According to the respondent since he had no access to his wife since 14.7.1990, the twins were obviously born out of adulterous relationship of the appellant with her sister's husband Arjun Ram respondent No. 2. The appellant and Arjun Ram refuted these charges. According to her she was driven out of her matrimonial home on 26.8.1990 and it was wrong to say that the husband did not have access to her since 14.7.1990. She has denied the charge of adultery. The husband had taken two other grounds, that of cruel conduct and desertion without reasonable cause, against the wife and the wife refuted these allegations also.

3. The learned District Judge found that the grounds of cruelty and desertion were not proved against the appellant wife, but the ground of adultery was proved. He therefore granted a decree of divorce on that ground.

4. From the proved facts which are almost admitted, it is clear that after 26.8.1990 the respondent No. 1 had no access to the appellant. According to the appellant herself, she was running in two and half to three months of pregnancy on 26.8.1990 when she was driven out of her matrimonial home. If that is true, the appellant had to explain as to how the twins could have been born out of her marriage with the respondent No. 1. The facts which came out from the record are that the twins were born 325 days after 26.8.1990. Even assuming that the statement of the appellant, that she was carrying pregnancy of two and half to three months on 26.8.1990, was a casual statement made off guard, in the common course of natural events it was not possible to have the twins from the husband who had no access for a period over 325 days to the wife. If the admission of the appellant that she was carrying pregnancy of two and half to three months on 26.8.1990 is taken into account, the twins were born after 400 to 415 days after the separation.

5. The learned Counsel for the appellant brought to my notice a passage from Modi's Medical Jurisprudence and Toxicology, 21st Edition, page 400-401 wherein

while dealing with maximum period of pregnancy, certain cases have been cited in which the maximum period of pregnancy has been recorded between 300 to 389 days. However, these are all exceptional cases and every exception has to be proved by the person who claims it to have occurred. Moreover in the cases which are cited in the aforesaid passage the child born is not a normal child, it is either over-grown or still-born. In a case of a Hindu woman from Orissa, aged 36 years, cited in the aforesaid passage, the period of gestation was 315 days from the first day of her last menstrual period and nearly 300 days calculated from the probable day of ovulation or fertilisation. The child was 22 inches long and weighed 9 pounds 6 ounces. The centres of ossification were visible in the upper epiphysis of the tibia and humerus in addition to that in the lower epiphysis of the femur. In the European case cited in the aforesaid passage the children born between 331 and 336 days of gestation were found to be between 12-3/4 lbs. to 13-1/4 lbs. In another case where gestation period of 343 days, the child born was larger than the normal child and was 50 cms. long and weighed 50,000/- (sic.) grams.

6. In the present case Ex. P1 Medical Certificate shows that the twins were female and male. The female weighed 1.5 kgs. and had a height of 42 cms. and head circumference of 27.5 cms. The male child was 1.9 kgs. in weight, 41 cms. in height and had head circumference of 28.5 cms. It was also observed that no obvious congenital abnormality was detected. It cannot therefore be said that the twins were over-grown or abnormal suggesting a longer period of gestation. In the aforesaid circumstances the finding of the Trial Court that twins were born not out of but outside the wedlock has to be accepted.

7. The argument of the learned Counsel for the appellant that it has not been proved that the appellant had illicit relation with respondent No. 2 as suggested and therefore the appellant could not have been held guilty of adultery has to be rejected outright. It is not necessary for the aggrieved husband to prove with whom his erring wife had illicit relations. It is enough for him to prove that she was leading an adulterous life. In this case despite the fact that the Trial Court did not find respondent No. 2 guilty of adultery, the appellant could have been and has rightly been found guilty of adultery. For the aforesaid reasons this appeal has no force. It is dismissed.

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