Supreme Court of India
Earnest John White vs Mrs. Kathleen Olive White And ... on 10 March, 1958
Equivalent citations: 1958 AIR 441, 1958 SCR 1410
Author: K L.
Bench: Kapur, J.L.

PETITIONER:
EARNEST JOHN WHITE

Vs.

RESPONDENT:
MRS. KATHLEEN OLIVE WHITE AND OTHERS

DATE OF JUDGMENT:
10/03/1958

BENCH:
KAPUR, J.L.
BENCH:
KAPUR, J.L.
BHAGWATI, NATWARLAL H.
GAJENDRAGADKAR, P.B.

CITATION:
1958 AIR 441 1958 SCR 1410

ACT:
Divorce-Adultery-Standard of Proof-Principle-Direct evidence if imperative-Finding of fact when can be interfered with-Divorce Act (IV of 1869), ss. 14 and 7.

HEADNOTE:
The appellant sued his wife for dissolution of marriage on the ground of her adultery.
On the evidence the trial court found that it was not possible to hold that adultery had been committed, though it found that one of the letters contained "a large substratum of truth". The High Court in appeal concurred with the decision. On appeal to the Supreme Court it was contended for the appellant that the finding of the courts below was vitiated because certain pieces of evidence had been misread, and some others ignored. As a matter of legitimate and proper inference the Court should not have arrived at any other conclusion, but that the wife was guilty of adultery with respondent NO. 2. The evidence showed that the wife went to Patna and stayed in a hotel with respondent NO. 2 under an assumed name, that they occupied the same room in the hotel, that the conduct of the respondent indicated a guilty inclination, and that so far as the wife was

concerned, her conduct was entirely consistent with her guilt :
Held, that, the nature of the evidence adduced was such as would satisfy the requirements of s. 14 of the Divorce Act, and that the finding of the Courts below that an inference of adultery could not be drawn therefrom must be set aside.
Although it is not usual for the Supreme Court to interfere
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on questions of fact, where, however, the courts below ignore or misconstrue important pieces of evidence in arriving at their finding, and this Court is of the opinion that no tribunal could have come to such a finding oil the evidence taken as a whole, such finding was liable to be interfered with by this Court.
Held, further, that the words "satisfied on the evidence" in s. 14 Of the Divorce Act, 1869, imply that it is the duty of the (Court to pronounce a decree only when it is satisfied that the case lhas been proved beyond reasonable doubt as to the commission of a matrimonial offence.
The evidence must be clear and satisfactory beyond mere balance of probabilities. It is not neccessary and rarely possible, to prove the issue by any direct evidence.
The rule laid down in Preston Jones v. Preston Jones, [1951] A.C. 391, lays down the principle that should be followed by tile courts under s. 7 Of the Divorce Act.
State of Madras v. A. vaidanatha Iyer, A.I.R. 1958 S.C. 61, Purvez Ardeshir Poonawala v. The State of Bombay, Cr. A. 122 Of 1954, decided on December 20, 1957, Stephen Seneviratne v. The A.I.R. 1936 P.C. 289, Mordaunt v. Moncrieffe, (1874) 30 649 and Gower v. Gower [1950] 1 All. E.R. 804, referred to.
Loveden v. Loveden, (1810) 161 F. R. 648 ; (1810) 2 Hag. Con. 1,3, referred to.
Preston Jones v. Preston Jones, [1951] A.C. 391, relied upon.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil AppeAl No. 19 of 1956. Appeal from the judgment and decree dated July 21, 1954, of' the Patna High Court in Letters Patent Appeal No. 24 of 1951, arising out of the judgment and decree dated May 15, 1951, of the said High Court in Matrimonial Suit No. 2 of 1950.

M. C. Setalvad, Attorney-General for India, N. C. Chatterjee and P. K. Chatterjee, for the appellant. Both the Courts below have failed to draw the proper inference of the commission of adultery, which should legitimately have been drawn from the facts proved. Both the Single Judge and the Appeal Court failed to take into consideration some pieces of evidence and certain other pieces of evidence which were equally important had been misread and misconstrued and as a matter of legitimate and proper inference the lower courts should not have arrived at any other 179 conclusion but that the

wife was guilty of adultery and in such case the interference with the finding of facts below by the Supreme Court will be called for.

State of Madras v. A. Vaidanatha Iyer, A. I. R. 1958 S. C. 61 and Stephen Seneviratne v. The King, A. I. R. 1936 P. C.

289. N.C. Chatterjee continued. The judgment of the High Court suffers from certain serious infirmities and this Court should not act on the rigid principle that finding of fact should not be interfered with in the final court of appeal. Sir William Scott's dictum in Loveden v. Loveden, (1810) 161 E. R. 648, as to " the guarded discretion of a reasonable and just man" does not mean there should be satisfactory evidence of the commission of a matrimonial offence. Lord MacDermott has pointed out in Preston Jones v. Preston Jones, L. R. [1951] A.C. 391, that if a judge is satisfied beyond reasonable doubt as to the commission of the matrimonial offence relied on by the petitioner as ground for divorce, he must surely be "satisfied" within the meaning of the enactment, and no less so in cases of adultery where the circumstances are such as to involve the paternity of a child. To succeed on an issue of adultery it is not necessary to prove the direct fact of, or even an act of adultery in time and place ; for if it were so, in many few cases would that proof be attainable. It has been pointed out in a number of cases that rarely the parties are surprised in a direct act of adultery and such evidence will have to be disbelieved. Rydon on Divorce, 6th Edn., P. 115; Douglas v. Douglas, [1951] P. 85: [1950] 2 All E.R. 748. In nearly every case the fact of adultery is inferred from circumstances which lead to it by fair inference as a necessary conclusion. Unless it is so held there will absolutely be no protection to marital rights. Allen v. Allen, [1894] p.248, approving Loveden v. Loveden. Counsel then cited Davis v. Davis, [1950] P. 125: [1950] 1 All E. R. 40. In that case Bucknill, L. J., and Somervell, L. J., held that when husband petitions for divorce on the ground of wife's cruelty, it is unnecessary to introduce any question of the standard of proof required of a criminal charge. Denning, L. J., emphasised that a suit for divorce is a civil and not a criminal proceeding. The same standard of proof as that required in criminal cases is not needed. The stringency of proof required in a criminal court is not necessarily called for in divorce suit. Lord Merriman's dictum quoting Churchman v. Churchman, [1945] P. 44, that the same strict proof is required in the case of matrimonial offence as is required in connection with criminal offence has been too widely expressed and should be read in the light of later judgments.

Recent judgment of the Court of Appeal (Bucknill, L. T., and Denning, L. J.,) lays down the correct law in Gower v. Gower, [1950] 1 All E.R. 804, that the correct approach has been laid down by Denning, L. J., who observed that the court should not be irrevocably committed to the view that a charge of adultery must, be regarded a criminal charge, to be proved beyond all reasonable doubt. All that the statute requires is that the court must be satisfied on the evidence that the case of the petitioner has been proved and it is submitted that Denning, L. J., has enunciated the correct principle and the statute lays down a standard and puts adultery on the same footing as cruelty, desertion or unsoundness of mind.

N. C. Chatterjee cited also Mordaunt v. Moncrieffe, (1874) 30 L.T. 649.

S. P. Varma, for the respondent. The burden of proof is on the person alleging adultery and there is always a presumption of innocence. In any event on a petition for divorce some strict proof is required of adultery as is required in a criminal case before a person is found guilty. Ginesi v. Ginesi, [1948] P. 179: [1948] 1 All E.R. 373. Applying the dictum of Lord Merriman in Churchman v. Churchman, [19451 P. 44, the trial court was not satisfied of the guilt beyond all reasonable doubt. It is for the trial judge to decide an issue of fact ; unless he has misdirected himself his finding should not be disturbed. R. Patnaik, for co-respondent No. 1. Submitted that the evidence in the case falls far short of the standard of proof required.

1958. March 10. Tile Judgment of the Court was delivered by KAPUR J.-This is an appeal with a certificate under s. 56 of the Divorce Act (IV of 1869) (hereinafter called the Act) against a judgment and decree dated July 21, 1954, of the High Court of Patna dismissing the husband's suit. The husband who is the appellant sued his wife who is respondent No. I for dissolution of marriage on the ground of her adultery with two co-respondents now respondents Nos. 2 and

3. The suit was tried in the High Court by Shearer J., who dismissed the suit and this decree was on appeal confirmed by the Appeal Court. The question as to the legality of the certificate granted was raised but in the view that we have taken it is not necessary to decide this question. The husband was married to the wife at Kharagpur on February 3, 1,943, and there is no issue of the marriage. The parties thereafter resided at "Rose Villa" at Samastipur and respondent No. 2 was residing with his mother in an adjoining house called " Sunny Nook". The husband alleged various acts of adultery between the wife and the other two respondents. As regards allegations of' adultery of the wife with respondent No. 3, the High Court has found against the husband and these findings have not been challenged before us. The allegations of adultery between the wife and respondent No. 2 were also held not proved. In appeal before us the husband has confined his case to the acts of adultery alleged to have been committed at the Central Hotel, Patna where the wife and respondent No. 2 are alleged to have resided together between July 25, 1950 and July 28, 1950, under the assumed names of Mr. and Mrs. Charles Chaplin. The wife pleaded that she came to Patna solely with the object of having her tooth extracted and returned to Samastipur the same day and that she had to come alone as in spite of her request the husband refused to accompany her.

Respondent No. 2 pleaded that he came to Patna with his mother " in connection with seeking employment under the Superintendent Of Police, Anti-Smuggling Department, also in connection with mother's tooth trouble and for house hold shopping ". He also pleaded that he stayed with his mother in the same room under his own name and not under an assumed name.

The trial judge found that the wife and respondent No. 2 and the latter's mother stayed in two rooms in the Hotel Nos. 9 & 10 from July 25, 1950 to July 28, 1950. He accepted the, testimony of the Manager of the Hotel, Cardoza P. W. 3 and also of the sweeper Kira Ram P. W. 4. He found that the Wife and respondent No. 2 were seen by Kira Rain in room No. 10 and also that the party, i.e., the wife, respondent No. 2 and the latter's mother were served morning tea in one room which they had together but he did not infer any acts of adultery from this conduct. The document Ex. 8 dated November 22, 1950, but actually written earlier was held by the learned Judge to contain " a large substratum of truth ". The Appeal Court (S. K. Das C. J. and Ramaswami J.) agreed with the findings

of the trial judge but they also were unable to draw the inference of the commission of adultery front the evidence. In appeal it was contended that the findings of the courts below. were vitiated because certain pieces of' evidence had been misread, some ignored and as a matter of legitimate and proper inference the court should not have arrived at any other conclusion but that the wife was guilty of adultery with respondent No. 2. This Court will not ordinarily interfere with findings of fact given by the trial judge and the Appeal Court but if in giving the findings the Courts ignore certain important pieces of evidence and other pieces of evidence which are equally important are shown to have been misread and misconstrued and this Court comes to the conclusion that on the evidence taken as a whole no tribunal could properly as a matter of legitimate inference arrive at the conclusion that it has, interference by this Court will be called for. (See State of Madras v. A. Vaidanatha Iyer Purvez Ardeshir Poonawala v. The State of Bombay(2); Stephen Seneviratne v. The King (3).

The Central Hotel, Patna, which is alleged to be the scene of adultery by the wife bad only 10 rooms, which were all single, but whenever necessary additional beds were put in. At the relevant time M. C. Cardoza P. W. 3 was employed as its Manager, Kira Ram P. W. 4 as a sweeper, Abdul Aziz P. W. 5 and Usman Mian P. W. 6 as bearers. Kira Ram identified the wife as the lady who had stayed at the hotel with respondent No. 2 but the other hotel servants although they were shown the photograph of the wife and also saw her in court were unable to recognize her as the person who stayed with respondent No. 2. But they did identify him as the gentleman who had stayed in the hotel along with two ladies. Examined by counsel Kira Ram stated:

Q. " (Pointing out to the wife) I ask you, do you know this lady? A. Yes. Q. Did they ever visit your hotel? A. Yes. Q. How long ago? A. About 9 or 10 months ago. Q. How long did they stay there? A. About 4 or 5 days. Q. What room did they occupy? A. Room No. 10 ".

He was unable to say as to the number of beds in room No. 10 nor is there any other evidence in regard to this. He also stated :

Q. " During their stay for these 4 or 5 days in your hotel, did you go to clean their bath room ? A. Yes. Q. Did you see them in that room whenever you went ? A. Yes, whenever I used to go to sweep the room I found Memsaheb and Saheb there." (Questioned by the Court the witness said: Q. "Can you remember was there any other Memsaheb with these two? A. There was another Memsaheb who lived in room No. 9.

Q. What was she like young Memsaheb or what ? A. She was not very old, but she was old."

(1) A. T. R. 1958 S.C. 61, 64.

(2) Cr. A. I 22 Of 1954, decided on December 20, 1957. (3) A.I.R. 1936 P.C. 289, 299.

And this obviously refers to respondent No. 2's mother. The evidence of Kira Ram therefore shows that the wife and respondent No. 2 occupied one room, room No. 10. No question was put to this witness as to his hours of duty nor was the manager Cardoza asked anything about it but another witness Abdul Aziz bearer P.W. 5, was asked about it as follows:

Q. " What are the hours of work of the sweeper ? A. He comes at 7 a.m. and he leaves in the evening.He sometimes goes away at about 11 and 11-30 a.m.or 12 noon". Similarly no questions were put to Kira Ram about the state of habillement of the wife and respondent No. 2 and the witness never deposed about this fact. The learned trial Judge erroneously thought that when Kira Ram spoke of the wife and respondent No. 2 lie " speaks as if ' they' were fully dressed and not en deshabille " and the Appeal Court took this finding to be " as if this witness's evidence showed that both of them were fully dressed". The Appeal Court also seems to have misdirected itself in regard to the duty hours. It said " the sweeper concedes that he was on duty from 6 a.m. to 11 a.m. " There is also evidence which has not been rejected that morning tea was served to all the three, i.e., the wife, respondent No. 2 and the mother of the latter in the same room. The statement of Kira Ram that the wife and respondent No. 2 occupied the same room receives corroboration from Ex. 6 the hotel bill and receipt dated July 29, 1950 for room No. 10 in the name of Mr. and Mrs. Charles Chaplin. This document even though contempo- raneous with the events under consideration and strongly corroborative of Kira Ram's evidence and of the statement of Cardoza that when Mr. and Mrs. Charles Chaplin "stayed in the hotel, they stayed in their own room " does not seem to have been brought to the notice of either of the Courts below. Because of the infirmities pointed out above the import of the testimony of Kira Ram which has in the main been accepted by both the Courts below has been missed and its necessary consequences ignored.

Then there is the evidence as to disappearance of the entry in the Hotel Visitor's Book which was in the handwriting of respondent No. 2. This entry was in the assumed name of Mr. and Mrs. Charles Chaplin from Hong Kong but when he (respondent No. 2) was asked to fill in the Foreigner's form the entry was changed from Hong Kong to Samastipur. The entry itself could not be produced in Court because as deposed by Cardoza, respondent No. 2 came to the hotel and by managing to send the hotel servant away from the room where the Visitor's Book was kept, he tore off the pages containing this entry. This fact receives support from the complaint which Cardoza made to the police on December 5, 1950, and the entry in regard to this complaint made in the Station House Diary of the same date. Both these documents have been produced as Exs. 1/1 and 1/2. The significance of this piece of evidence lies in the fact that it was done after the husband started collecting evidence of adultery and after lie and his sister had inspected the entry which according, to his statement was in the handwriting of respondent No. 2.

The reason of the wife's visit to Patna was tooth trouble. After her tooth was extracted she did not ,ice her -Dentist again even though he had asked her to (lo so. Her version is that she returned to Samastipur the same evening which the Courts below have not accepted. Thus it shows that she stayed on at the Central Hotel, Patna for four days with respondent No. 2 without any reason being given by her and so far as the hotel bill and receipt Ex. 6 goes, the hotel charges for her stay were paid by " Charles Chaplin ", i.e., respondent No. 2 and not by her. This fact has again escaped the notice of both the Courts below. And this is more in consonance with guilt than innocence of the wife. There are then the statements of J. A. Baker P.W. 8 and T.H. O'Conior P.W. 9 to the effect that in September 1950, at the house of O'Connor respondent No. 2 in the presence of these two witnesses boasted of his having had a good time with the wife and that she was a remarkable lady ". Respondent No. 2 had also love letters purporting to be from the wife, parts of which he read out to these witnesses. They repeated the story to the husband which set him thinking. Shearer J. held this

part of the evidence to be true and the Appeal Court also accepted it but construed it as showing that there was no adulterous connection at that time, i.e., in September or it had ended at the instance of the wife. Even as it is this finding is not destructive of the husband's case as to adultery at Patna in the month of July; on the other hand it supports adulterous relations. The presence of the mother of respondent No. 2 might have been a shield against the commission of adultery at Patna but the document Ex. 8 which has been accepted by the Courts below to have a substratum of truth just strips it away. This document is indicative of the mother's attitude towards the wife. The following extract from this document is relevant as showing that she wanted the wife for her son: " How nice it would have been if you had married my son

-David'. On another occasion while having tea along with her she begged me to leave my husband and go away with her son who was ruining his life and health and could not settle down to a job as he could not bear to see me married to another man."

The presence of the mother would thus be no impediment to adulterous relations between the two. The wife in the witness box wholly denied the episode of the Central Hotel including her stay there, which has deprived the Courts of her explanation. We are, therefore unable to get any assistance from her or as a matter of that from respondent No. 2 as to what happened in the hotel at Patna. The appellant contends that the only conclusion to be arrived at upon the evidence taken as a whole is that the wife was guilty of adultery with respondent No. 2. In other words the evidence was in quality and quantity such that it satisfies the requirements of s. 14 of the Act which provides:

S. 14 "In case the Court is satisfied on the evidence that the case of the petitioner has been proved....." The important words requiring consideration are "satisfied on the evidence ". These words imply that the duty of the Court is to pronounce a decree if satisfied that the case for the petitioner has been proved but dismiss the petition if riot so satisfied. In s. 4 of the English Act, Matrimonial Causes Act of 1937 the same words occur and it has been there held that the evidence must be clear and satisfactory beyond the mere balance of probabilities and conclusive in the sense that it will satisfy what Sir William Scott described in Loveden v. Loveden (1), as " the guarded discretion of' a reasonable and just man ". Lord MacDermott referring to the description of Sir William Scott said' in Preston Jones v. Preston Jones (2): " The jurisdiction in divorce involves the status of the parties and the public interest requires that the marriage bond shall not be set aside lightly or without strict enquiry. The terms of the statute recognise this plainly, and I think it would be quite out of keeping with the anxious nature of its provisions to hold that the court might be "satisfied " in respect of a ground for dissolution, with something less than proof beyond reasonable doubt. I should, perhaps, add that I do not base my conclusion as to the appropriate standard of proof on any analogy drawn from the criminal law. I do not think it is possible to say, at any rate since the decision of this House in Mordaunt v. Moncrieffe (3) that the two jurisdictions are other than distinct. The true reason, as it seems to me, why both accept the same general standard- proof beyond reasonable doubt-lies not in any analogy but in the gravity and public importance of the issue with which each is concerned."

The Act lays down in s. 7 that Courts in all suits and proceedings under the Act shall act and give relief on principles and rules which in the opinion of the (1) (1810) 161 E.R. 648, 649; (1810) 2 Hag.

Con. 1, 3. (2) [1951] A.C. 391, 417.

(3) (1874) 30 L.T. 649.

Court are as nearly as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief. In our opinion the rule laid down by the House of Lords would provide the principle and rule which Indian Courts should apply to cases governed by the Act and the standard of proof in divorce cases would therefore be such that if the judge is satisfied beyond reasonable doubt as to the commission of the matrimonial offence he would be satisfied within the meaning of s. 14 of the Act. The two jurisdictions, i.e., matrimonial and criminal are distinct jurisdictions but the terms of s. 14 make it plain that when the Court is to be satisfied on the evidence in respect of matrimonial offences the guilt must be proved beyond reasonable doubt and it is on that principle that the Courts in India would act and the reason for adopting this standard of proof is the grave consequence which follows a finding of guilt in matrimonial causes.

Gower v. Gower (1) was pressed before us by counsel for the appellant as to the approach that the court should have to a matrimonial offence. But in view of the decision in Preston Jones Case (2) it is unnecessary to discuss that case. In a suit based on a matrimonial offence it is not necessary and it is indeed rarely possible to prove the issue by any direct evidence for in very few cases can such proof be obtainable. The question to be decided in the present case therefore, is whether on the evidence which has been led, the court can be satisfied beyond reasonable doubt that adultery was committed by the wife with respondent No. 2 at Patna between July 25, 1950, and July 28, 1950. In our opinion the facts proved are quantitatively and qualitatively sufficient to satisfy the test laid down by the House of Lords in Preston Jones Case (2). The wife went to Patna and stayed with respondent No. 2 under an assumed name. They occupied the same room, i.e., room No. 10. There was undoubtedly a guilty inclination and passion indicated by the conduct of respondent No. 2 and there is no contrary indication as to (1) [1951] 1 All E. R. 804.

(2)[1951] A.C. 391, 417.

the inclination and conduct of the wife. On the other hand her conduct as shown by the evidence is so entirely consistent with her guilt as to justify the conclusion of her having committed adultery with respondent No. 2 and therefore the finding of the Courts below as to the guilt should be reversed.

We would, therefore, allow this appeal, set aside the judgment and decree of the High Court and pass a decree nisi for dissolution of marriage. As adultery has been proved respondent No. 2 shall pay the costs in this Court and in the Courts below.

Appeal allowed.