Madhya Pradesh High Court
Samuel Bahadur Singh vs Smt. Roshni Singh And Anr. on 31 August, 1959
Equivalent citations: AIR 1960 MP 142
Author: Naik
Bench: T Naik, T Shrivastava, S Sen
JUDGMENT Naik, J.

1. The applicant Samuel Bahadur Singh has been granted a decree nisi against respondent No. 1 Roshni Singh for the dissolution of his marriage with her. He has also been granted a decree for Rs. 500/- as damages against the co-respondent Chhuttan. The proceedings have been submitted to this Court under Section 17 of the Indian Divorce Act (hereinafter referred to as the Act) for the confirmation of the decree nisi aforesaid.

2. The petitioner was married to the respondent Roshni Singh at the St. Paul's Church at Jabalpur on 14-1-1953. After their marriage, they lived and co-habited at 117, Napier Town, Jabalpur, till about 16-1-1954. On or about 16-1-1954, the respondent Roshni Singh left the petitioner's house informing him that she was going to her brother's place at Mandla. She never came back to live with him thereafter. Soon after January 1954, the petitioner was transferred to Wardha where he lived for about 2 1/2 years. In the last week of November 1957, the petitioner was transferred back to Jabalpur, when he learned that his wife, the respondent Roshni Singh, was living in adultery with the corespondent Chuttan at Mandla for the last three years and that she had also begotten a son from him.

He, therefore, filed the present petition under Section 10 of the Act for the dissolution of his marriage with his said wife, the respondent Roshni Singh, on the ground that since the solemnization of his marriage with her, she had been guilty of adultery with the co-respondent Chhuttan. He averred that there was no collusion between the parties for the purpose of obtaining the divorce and that the petitioner had neither connived at, nor condoned, the adultery committed by the respondent Roshni Singh with the co-respondent Chhuttan. He also claimed a sum of Rs. 1,000/- as damages from the co-respondent Chhuttan for the loss of company of his wife.

3. The petition was undefended, and the proceedings were ex parte, both against the respondent Roshni Singh as well as against the co-respondent Chhuttan. The learned District Judge held that the petitioner and the respondent Roshni Singh professed Christian religion, that they were Christians at the time of their marriage as also at the time the present petition was made, and that their marriage was solemnized according to the Christian rites at the St. Paul's Church, Jabalpur, in the year 1953. He also found that the petitioner and the respondent Roshni Singh were domiciled in India and that they last resided together at Napier Town, Jabalpur, within the jurisdiction of his Court. He further held that since the solemnization of their marriage, the respondent Roshni Singh had been guilty of adultery.

Relying on the testimony of the petitioner, he also held that there was no collusion between the parties and that the circumstances of the case showed that the petitioner had neither connived at, nor condoned, the adultery committed by the respondent Roshni Singh with the co-respondent

Chhuttan. As regards damages, the learned District Judge came to the conclusion that the married life of the petitioner and the respondent Roshni Singh for about a year after marriages was happy and that the loss of the former's wife was brought about by a wrongful act of the co-respondent Chhuttan without any fault on the part of the petitioner. He accordingly passed a decree nisi in favour of the petitioner for the dissolution of his marriage with the respondent Roshni Singh. He also passed a decree for a sum of Rs. 500/-as damages against the co-respondent Chhuttan and also awarded costs of the proceedings against both the respondent and the co-respondent.

4. Before us also, neither the respondent nor the co-respondent have appeared, though they were served with notices of these proceedings. The learned counsel for the petitioner took us through the evidence, and, in our opinion, the findings that the petitioner and the respondent Roshni Singh were Christians at the time of their marriage, that they were married according to the Christian rites, and that they were practising the Christian religion at the time of filing of the present petition, are amply established. There is also no evidence to show that there was collusion between the parties for the purpose of obtaining a divorce. The Deputy Government Advocate, who appeared for the Legal Remembrancer on a notice as required by Section 17A of the Act, also stated that there was no evidence of collusion between the parties and that the State Government had no objection to the decree being confirmed.,

5. These are proceedings for the confirmation of a decree nisi. The obvious intention of the legislature, as expressed in Section 17 of the Act is that the High Court, upon a reference for confirmation should review the entire evidence and come to its own conclusion as to whether the facts proved are sufficient to justify a decree for the dissolution of marriage : (see A. A. Garlinge v. I. R. Garlinge, ILR 44 All 745: (AIR 1922 All 504) (FB) and John Howe v. Charlotte Howe, ILR 38 Mad 466: (AIR 1916 Mad 338) (FB)). The obligation became all the more greater in the instant case because the petition was undefended in the lower Court and in this Court also the respondent and the co-respondent have not cared to appear to oppose the confirmation.

6. The dissolution of the marriage of the petitioner with the respondent was sought on the ground that since the solemnization of his marriage with her, she had been guilty of adultery with the co-respondent at Mandla. The petitioner, who examined himself as P.W. 1 had no personal knowledge of the alleged adultery. All he stated in his deposition was that the respondent wife left his house after 16-1-1954 saying that she had to go to Mandla, i.e., to the place of her brother, and in the same month, after her departure, he was transferred to Wardha and from there be used to write letters to her and her brother that the respondent should live with him at Wardha but they were both delaying her corning back to him on one pretext or the other with the result that his wife (the respondent) did not come and stay with him at Wardha. He further stated that a child born to her after she had left his house was not from him, but regarding the birth of this child also, he had no personal knowledge.

He sought to prove the fact of adultery from the evidence of Newton (P.W. 2) and Mst. Shanti (P.W. 3), who is his mother. The former stated that he was a frequent visitor to the house of the co-respondent, that he had seen the respondent living with the co-respondent as his wife at the latter's house at Mandla, that she had also given birth to a male child from the co-respondent, and

that the child was (on the date of his evidence, i.e., on 9-2-1959) about three or four years old. Mst. Shanti (P.W. 3) had specially gone to Mandla to investigate the matter. She stated that she learnt from the neighbours of the co-respondent that he was living with the respondent. She also saw with her own eyes the respondent living in the house of the co-respondent, and, according to her, no third person lived with them.

7. We could not come to any definite finding on the basis of the evidence on record, whether the birth of a child to the respondent proved adultery because the age of the child alleged to have been born to her after she left the petitioner's house was said to be about four years old. No exact date of birth was proved, nor was any attempt made to establish that the child could not have been begotten on her by the petitioner. We further found that the evidence did not disclose who the brother of the respondent was, what attempts were made by the petitioner to bring the respondent back and whether the co-respondent was not a brother of the respondent to whom she had gone.

8. As clarification on the aforesaid points was necessary before the decree nisi could be confirmed, we further examined the petitioner to enable him to explain certain facts appearing in the evidence. In Holloway v. Holloway and Camptell, ILR 5 All 71 at p. 75, a reference for confirmation, the High Court examined the petitioner further in order to afford him an opportunity of explaining certain parts of his evidence as well as to enable the Court to obtain further information because it found the evidence of the petitioner highly unsatisfactory. Giving its reasons for this course, the learned Judges said :

"... .the High Courts in these divorce cases are placed in a very difficult position. For, in the absence of any official like the Queen's Proctor in England, they have, where suspicion is aroused as to the conduct or good faith of the parties, to inaugurate and carry out such inquiries and investigations as may appear necessary, in order to prevent the provisions of the divorce law being abused and themselves being imposed upon."

9. In answer to our question, the petitioner, inter alia, stated that when his wife (the respondent) left him, she was not pregnant, that the name of his wife's brother was Israel and that Chhuttan (the co-respondent) was a different person, and that he had written to his wife's brother to send his wife back but, though he replied to the first letter saying that he would send her, he did not give any reply thereafter, and consequently he also stopped writing to him.

10. From the evidence on record we have no doubt that the respondent, who was the married wife of the petitioner, has been living in adultery with the co-respondent at his house at Mandla. 'Adultery' has been defined as voluntary sexual connection between two persons of opposite sex who are not married to each other but of whom one at least is married to a third person : (See Phillips' Divorce Practice, Fourth Edition, p. 16). To succeed in a petition for divorce on the ground of adultery, adultery must be established to the satisfaction of the Court beyond reasonable doubt; but, as direct proof of adultery can rarely be had, a Court may infer adultery from certain facts unless there is evidence to negate the inference.

In Loveden v. Loveden, (1810) 2 Haq Con 1 at p. 2, Sir William Scott said that it was necessary to prove the direct fact of adultery, for "if it were otherwise, there is not one case in a hundred in which that proof would be attainable: it is very rarely indeed that the parties are surprised, in the direct fact of adultery. In every case, almost the fact is inferred from circumstances that lead to it by fair inference as a necessary conclusion; and unless this were the case, and unless this were so hold, no protection whatever could be given to marital rights".

That passage has been quoted with approval in the Court of Appeal by Lopes, L. J. in Alien v. Alien and Bell, 1894 P 248 at p. 252, where he said :

"To lay down any general rule, to attempt to define what circumstances would be sufficient and what insufficient upon which to infer the fact of adultery, is impossible. Each case must depend on its own particular circumstances."

The Court usually infers adultery from the fact that the respondent wife shared a bed or bedroom for the night with a person of opposite sex other than the petitioner or from the fact that the respondent had been carrying on an association with a person of the opposite sex other than the petitioner and there is evidence of illicit affection or undue familiarity between them coupled with an opportunity for them to have committed adultery.

11. In the instant case, the respondent went and stayed in the house of the co-respondent for over three years alone with him. The evidence of Newton (P.W. 2) shows that she was living as his wife, and the evidence of Newton (P. W. 2) and Shanti (P.W. 3) is that no third person lived with them. In India, it is not usual for a young man and woman to live together in a house when they arc neither related nor married to each other. In the instant case, there is no reasonable innocent explanation to account for the respondent and the en-respondent living together. Society being very much more conservative here than elsewhere, it would not be unreasonable to infer adultery from the facts -- .

1. that only the respondent and the co-respondent stayed in one house together for a long time,

2. that the respondent had refused to go back to her husband,

3. that the respondent and the co-respondent had not the courage to come into the witness-box to deny the charge of adultery, and

4. that they had ample opportunity to commit adultery by being alone in the house, and their stay together cannot be accounted for on any other reasonable innocent hypothesis.

As pertinently observed by Young, J. in Cyril Gibbs v. Ellen Gibbs, ILR 55 All 597 : (AIR 1933 All 427):

"Where a man and a woman are found together under suspicious circumstances, it cannot be presumed that they are saying their prayers."

In the aforesaid case, the learned Judge inferred adultery from somewhat similar circumstances. We are, therefore, satisfied that there was proof of illicit affection coupled with an opportunity for the respondent and the co-respondent to have committed adultery.

12. We are, however, not satisfied that the evidence on record is sufficient to come to any positive conclusion that a child had been born to the respondent after she had left her husband's shelter, that a child, even if so born to her, was born out of wedlock or that it was a child begotten on her by the co-respondent. We have, therefore, not considered the allegation of the birth of a child to the respondent as any evidence of her adultery, but have based our conclusion on the oral evidence only.

13. The trial Court has also awarded to the petitioner a sum of Rs. 500/- as damages against the co-respondent. The co-respondent has not appealed against the order, but, under Section 17 of the Act, we have power to deal with the question at the time of confirmation of the decree nisi : see Kyte v. Kyte, ILR 20 Bom 362.

14. Under Section 34 of the Act, damages are claimable by the petitioner against the adulteror correspondent in a suit for dissolution of his marriage. The claim for damages is founded on the hypothesis that the husband has suffered injury by being deprived of the comfort and society of his wife through the wrongful act of the co-respondent Consequently, it is now well settled that compensatory damages only can be given and that exemplary or punitive damages are not permissible ; (See Butterworth v. Butterworth 1920 P. 126.) The measure of damages is thus the value of the wife, of which the husband has been deprived of by the wrongful act of the adulterer. In 1920 P. 126 (supra), McCardie, J., reviewing the case law on the subject, ruled as follows :

'..... the two main considerations upon which damages are to be based. They are these : first, the actual value of the wife to the husband; secondly, the proper compensation to the husband for the injury to his feelings, the blow to his marital honour and the serious hurt to his matrimonial and family life.

I take each head briefly; first, as to the value of the wife. This has two aspects -- namely, the pecuniary aspect, and the consortium aspect. The pecuniary aspect (which is generally the least important) depends on the wife's fortune : see Evans v. Evans and Platts. 1899 P. 195, per Jeune P.; her assistance in the husband's business : see Keyse v. Key.se and Maxwell. (1886) 11 PD 100, per Lord Hannen; her capacity as a housekeeper and her ability generally in the home. The considerations are concisely given in Sedgwick on Damages (1913), vol. ii, 9th ed., Section 478.

The consortium aspect is broader and depends on the wife's purity, moral character and affection, and her general qualities as a wife and mother. This is pointed out in all the old text-books already cited and also in the modern text-books on Damages, such as Arnold on Damages, 2nd ed. (1919), pp. 226 et seq., and Mayne on Damages, 9th ed. (1919), pp. 584 et seq., where the authorities are well collected and the appropriate considerations are indicated.

Now upon the pecuniary aspect of the value of a wife the adulterer's conduct has but little bearing. This branch of assessment must be decided by the criteria of good sense and experience : see also

Sedgwick on Damages (1913), 9th ed., Section 478.

But upon the consortium aspect of the matter the co-respondent's conduct may have the utmost relevance. For this branch depends, as I have said, upon the purity and general character of the wife. If the wife be of wanton disposition or disloyal instincts, it is obvious that the general value to the husband is so much the less. Thus if it be proved that she thrusts herself upon the co-respondent, or lightly yields to his desire, or holds herself out to be a single woman, a conclusion adverse to her general character and therefore to her value will at once be drawn : see per Sir Cresswell Cressell in Comyn v. Comyn and Humphreys, (1860) 32 LJP (M and A) 210, where he said to jury:

"If a woman surrenders herself very readily to a man, who fakes no pains to obtain her affections, or if you have reason to suppose that she has made the first advances, you are to estimate, as far as you can form an estimate in money, the loss the husband has sustained. If on the other hand the co-respondent has only gained his wish by assiduous seduction and by practised artifice, it may well be considered that the moral character and general worth of the wife is an asset of value to the husband."

The petitioner must, therefore, place before the Court all the' relevant factors on which a decision could be taken on the aforesaid points.

15. It is, therefore, pertinent to know whether the wife of the petitioner was a virtuous, good and industrious wife, whether their home life was happy, whether the husband derived pleasure from her society and was careful about her chastity, whether the husband reasonably provided for bis wife and did not leave her destitute at any time, whether he made any genuine attempts to bring her back from the house of her brother where she had ostensibly gone, how the adulterer obtained introduction to the wife and how he estranged her affection to her husband, who made the first advances, whether there was any treachery in his conduct, whether the wife when living separate from her husband at Mandla posed herself as a simple unmarried woman, whether the co-respondent knew or ought to have known that the woman was a married woman and that he was committing adultery with her, and such other facts which may have a reasonable bearing on the question at issue,

16. In the instant case, all that has been vouchsafed to us is that the husband married the respondent Roshni Singh on 14th January 1953 and that on 16th January 1954 she left him to go to Mandla, i.e., the place of her brother', and thereafter never came back. The petitioner states that he made attempts thereafter to set her back but he neither went to Mandla nor has he filed the replies to letters said to have been sent by him to his wife and her brother. No letters of the wife to the petitioner have been filed to establish the affection or esteem in which she held him or his home, and it is not possible on the material before us to assess damages either regarding the pecuniary aspect or the consortium aspect or their married life.

17. It may, however, be argued, on the authority of Stone v. Stone and Appleton, (1864) 34 LJP (Mat) 33 and Long v. Long, (1894) 63 LJP 67, that non-contest by the co-respondent of the suit and, the decree for damages was tantamount to an admission of guilt and we may proceed to assess

damages on that presumption; and that, as held in Spedding v. Spedding and Smith, (1862) 31 LJP (M and A) 96, when adultery is proved, damages follow as a matter of course even though the husband has not been proved to have suffered any loss. On this nominal damages may be awarded. It is, however, now settled law that proof of adultery does not necessarily entitle a petitioner to any damages: (see Halsbury's Laws of England, 3rd Ed., Vol. 12, para 855). Adverting to the question, McCardie, J. in 1920 P. 126 (supra) said :

"Now, what are the principles., on which damages should be awarded? At the outset, there arises the question whether the Court is bound, upon proof of the adultery and the grant of a resultant decree, to assess any damages at all against the correspondent. In my humble opinion the Court is under no such obligation. Section 33 requires that claims for damages be tried on the same principles and subject to the same rules as an action for criminal conversation. That action, as I have ventured to point out, was in substance an action on, the case. It follows, therefore, I think, that the jury were entitled, although adultery was proved, and although the defendant had failed to establish a technical defence (e.g., privity of the plaintiff to the adultery), to find that the plaintiff had suffered no damage at all. This view seems to be agreeable to the trend of the old decisions and text-books. The summing up of Alderson J. in Winter v. Henn, (1831) 4 C and P 494 at p. 498, is not, I think, when taken as a whole, really adverse to the view I have expressed. In substance the matter could be put thus. The claim was for actual loss and injury and not for mere trespass. Therefore if loss or injury were not shown, the claim for damages failed."

In our opinion, therefore, on the facts of the instant case, the petitioner would not be entitled to any damages as he has not established what actual loss or injury he had suffered by the wrongful act of the co-respondent.

18. As regards costs, they have been awarded Jointly against the respondent and the co-respondent both. Though ordinarily a correspondent, who had no knowledge that the woman with whom he was consorting was a married woman, is not to be saddled with costs, in the instant case, we cannot believe that, even if he did not know initially, his continuance of the intimacy was without knowledge, and consequently we do not feel inclined to vary the direction regarding costs: Learmouth v. Learmouth and Austin. (1889) 62 LT 608.

19. In the result, we confirm the decree nisi, but set aside the direction as to damages against the co-respondent. There shall be no order as to costs of the confirmation proceedings.