

Patna High Court

Binod Anand Lakra vs Smt. Belulah Lakra And Anr. on 2 March, 1982

Equivalent citations: AIR 1982 Pat 213, 1982 (30) BLJR 372

Author: L M Sharma

Bench: L M Sharma, S Choudhuri, S Roy

JUDGMENT Lalit Mohan Sharma, J.

1. This case arises out of an application by the petitioner filed under Section 17 of the Divorce Act, 1869 (hereinafter referred to as the Act.) In 1978 he filed an application under Section 10 of the Act before the Judicial Commissioner, Ranchi, who by his judgment dated 18-8-1979 granted a decree of divorce. The petitioner has now moved this Court for confirming the decree.

2. The petitioner and his wife, respondent No. 1, are Christians and were married in 1966 at a Church in Ranchi town. According to the petitioner's case he and his wife had been living at different places, all within the jurisdiction of the Ranchi Court and led a normal conjugal life for several years. In 1976 the petitioner discovered close friendly relationship between his wife and Umesh Sinha co-respondent in this case, which he did not like. The wife did not react reasonably when the petitioner protested. Their relation then started cooling down and she started neglecting and refusing to fulfil her matrimonial obligations. The petitioner went to his village home in January, 1978 and on his return on 22-1-1978, he found the co-respondent staying in their house. On the petitioner demanding an explanation, his wife told him that the co-respondent was looking after her on being invited to do so. The petitioner found certain personal effects of the correspondent in the bed room, indicating that he was staying in the house even during the nights. This was confirmed by some friends and neighbours. In May, 1978 the co-respondent insulted the petitioner and openly declared his love for the respondent. The petitioner, thus, came to the conclusion that the respondent had committed adultery with the co-respondent and they were leading a life of sin. On these allegations, he filed an application before the Judicial Commissioner, Ranchi, for dissolution of the marriage.

3. Notices were issued to the respondents and due service was reported, but none of them appeared in the case. The case was taken up for ex parte hearing and the petitioner produced his marriage certificate exhibit 1 and examined himself for proving the allegations of adultery. The evidence as recorded by the Court was very brief and was to the effect that his wife had developed an illicit relationship with Umesh Sinha and they were living in adultery. He further said that his wife in his presence in 1976 had given a present to Umesh Sinha. Apart from giving of the present, the petitioner did not state any fact on the basis of which the conclusion about the respondents leading an adulterous life could be inferred. The Judicial Commissioner, Ranchi, however, by his judgment dated 18-8-1979, held that he was satisfied that the petitioner's case was true and a decree of divorce should be granted. On 2-5-1980 the petitioner applied under Section 17 of the Act for confirming the said decree.

4. The respondent filed an application in the court below under Order IX Rule 13 of the Civil P. C. for setting aside the ex parte decree on the ground that she was not duly served with the notice in the case, and the petitioner had obtained her signature by misleading her, on the basis of which it

had been assumed that the notice had been served on her. She also raised objection under Section 26 of the Act, She reiterated her stand by filing an application in the present case also. This case was placed for hearing on 16-2-1980 before a Bench of which I was a member. The petitioner refuted the respondent's allegation about the service of notice, but did not object to the suggestion of the respondent that an opportunity should be given to her for leading evidence provided the petitioner was also allowed to give further evidence. After considering the circumstances, the Bench, in view of paragraph 3 of Section 17 of the Act, which is quoted below, allowed the parties to lead further evidence,--

"The High Court, if it thinks further enquiry or additional evidence to be necessary, may direct such enquiry to be made or such evidence to be taken".

As further directed, a fresh notice was issued to the co-respondent also and all the three parties, thereafter, led further evidence before the court below which has been forwarded to this Court.

5. The respondent in her written statement and evidence has stated that since she could not get a child, the petitioner wanted to have a dissolution of the marriage and in early 1977, suggested accordingly to her, but she did not agree. Later on she became suspicious about her husband's character and found a photograph of the petitioner with a stranger girl in his box. Ultimately, the petitioner promised to close the unholy alliance with the girl and put the same in writing which has been marked as Ext. B in the case. The photograph has been produced in the case and marked as exhibit 2 on the basis of admission by the petitioner. The name of the girl in the photograph is now admitted by the parties as Rose Toppo. The photograph indicates that the two are very intimate and this fact has not been denied on behalf of the petitioner through his counsel before us. The case of the respondent further is that she had no knowledge of the proceeding in the court below before 9-4-1980 when the petitioner told her about it. She has emphatically denied the allegations of illicit relationship with Umesh Sinha. She had admitted this fact that Umesh Sinha is working in the National Coal Development Corporation Limited with her and had visited her place sometimes in presence of the petitioner, but has said that the allegations about her moving with him in rickshaw or presenting to him a sweater or having adultery with him are false. She admits of her presenting him with a Christmas Cake, but claims that having regard to the society in which the parties are living this cannot be characterized as unnatural and does not lead to the inference of the respondent leading a dishonourable life. She has stated that the petitioner lived with her till April, 1980 and both of them maintained a healthy normal relationship of husband and wife.

6. The statement of the petitioner as recorded in 1979 was far short of proving the case of adultery. It merely indicated the suspicion and belief of the petitioner. There was no material on the basis of which a court of law could have come to the said conclusion. After this Court's order dated 16-12-1980, the petitioner was recalled for further examination. If his allegations are analysed, they purported to prove that:--

(i) Umesh Sinha was visiting the couple since 1976;

(ii) the respondent had presented a sweater to him;

(iii) the two respondents sometimes moved together in the Ranchi market on a rickshaw in broad day light;

(iv) on 22-1-1978, in the evening the petitioner suddenly returned to Ranchi from his village home and found Umesh Sinha in the house and a box, clothes, tooth brush etc., belonging to him in wife's bed room. Umesh Sinha was laying on the bed and the respondent was also there :

(v) the respondents did not offer any reasonable explanation as to why the corespondent was living there.

Mr. A. K. Banerjee, learned counsel appearing on behalf of the petitioner, contended that in view of the above circumstances the conclusion is irresistible that the two respondents were living in adultery.

7. Mr. Prem Shankar Dayal, who represents the respondent has argued that even if all the allegations mentioned above be accepted as correct, they do not prove the case of adultery. He emphasised that what was earlier treated by the society with contempt is not now disapproved, and a lady cannot now be condemned as a fallen woman on account of intimacy with the other sex. In the modern age friendship between persons of opposite sexes cannot be looked down upon nor can they be stigmatised for maintaining such a relationship. The respondent is not an illiterate Adivasi girl--she is working in the National Coal Development Corporation Limited for a number of years -- and being by faith a Christian has been enjoying liberty in the matter of her acquaintance with the male sex. She is bound to be acquainted with many men working in the National Coal Development Corporation Limited. Dealing with the incident of 22-1-1978, Mr. Dayal maintained that on its basis an inference of adultery could not be drawn. He relied on *A.S. Puri v. K. L. Ahuja* (AIR 1970 Delhi 214), *Mrs. Dawan Henderson v. D. Henderson*, (AIR 1970 Mad 104) and *A. J. Tulloch v. M. P. Tulloch* (AIR 1975 Cal 243). Referring to the facts, as stated in para, 16 of the judgment in *A. S. Puri's case* (supra) Mr. Dayal emphasised that although Mrs. Ahuja was witnessing a cinema show with Mr. Puri and was resting her head on him and the latter had put his arm around her back several times during the show, the court held that adultery was not proved. He also placed reliance on the judgment in *A. J. Tulloch v. M. P. Tulloch* where the facts detailed in paragraph 29 of the judgment were not found sufficient for proving adultery. I do not find myself in a position to rely on these cases for the purpose they have been cited by Mr. Dayal. The question as to what inference of fact should be drawn on the basis of the evidence will have to be answered from case to case. No rule of evidence of a general application in this regard can be deduced. The circumstances appearing in the cited cases and on which the learned counsel for the respondent has placed great reliance, have to be judged along with other evidence in the case, as was actually done. To compare the evidence in a given case to that of an earlier reported case for this purpose is futile. As was observed in the Calcutta case, it is extremely difficult to prove actual fact of adultery, as seclusion and secrecy are most likely to be observed while indulging in such promiscuous acts. While judging the allegations in this respect, it has to be borne in mind that the circumstances may be infinitely diversified by the situation and character of the parties. Coming to the decision of the Delhi High Court, the first thing to take note of is that it was a criminal case where the petitioner was an accused. The principle which was laid down was that the fact of adultery has to be inferred from the totality of

circumstances that lead to it by fair inferences and as a necessary conclusion, and the circumstances must be such as should lead the guarded discretion of a reasonable and just mind to that conclusion it is not to be reached by rash and intemperate judgment, or upon assurances that are equally capable of two interpretations. Mr. Dayal claimed that the standard of proof of adultery would be the same whether in a criminal or civil case. He relied upon the observations of S. Basu, J, in A. J. Tulloch's case (supra) that the allegation of adultery in a divorce case cannot be accepted on mere preponderance of evidence, but has to be established beyond reasonable doubt. With great respect, I do not agree with the proposition that the standard of proof in the civil case is the same as in a criminal case.

8. It is, however, not necessary to discuss the general question relating to the standard of proof in all adultery cases, as the present case being one under the Divorce Act, 1869, Section 7 thereof furnishes a guideline in this respect. The relevant portion of the section reads thus:--

"Subject to the provisions contained in this Act, the High Courts and District Courts shall in all suits and proceedings hereunder, act and give relief on principles and rules which in the opinion of the said courts, 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".

The "principles and rules", as in England, have been referred to in the section in their widest meaning, and it is, therefore, necessary to find out the views of the English Courts. It is not apparent as to why the provision, quoted above, have been retained long after the Britishers have withdrawn from this country and the people having their roots in England have left, but so long the legislature does not repeal the section, it has to be given effect to. Mr. Banerjee has placed the judgment of G. P. Singh, J., in Prem Masih v. Mst. Kumudani Bai (AIR 1974 Madh Pra 88) referred to in Pulikkottial Cheru v. Mary Zechariah (AIR 1981 Madh Pra 112) (SB) where the latest view in England as expressed in the case of Blyth v. Blyth, (1966) 1 All ER 524, has been discussed. It has been held that the standard of proof in a case of matrimonial offence in a petition for divorce is not as strict as in a criminal case where the proof beyond reasonable doubt is required. I am in respectful agreement with the view" expressed by the Madhya Pradesh High Court and accordingly reject the argument of Mr. Dayal.

9. The question, however, remains as to whether in the present case the petitioner has furnished sufficient proof to establish his case of adultery against his wife. Having regard to the standard of society, of which the petitioner and his wife are members, it is difficult to suggest that the respondent was not expected to have male acquaintance. Since 1963 the respondent has been working in the Central Coalfields Limited (earlier N.C.D.C.), where she is acquainted with hundreds of persons. In such a situation, visit by a co-worker is also not unusual. The petitioner himself did not consider it so when the co-respondent started visiting the couple since 1976, until according to this case, a sweater was presented to him by his wife. In paragraph 9 of his application under Section 10 of the Act, the petitioner mentioned as below:--

"That the respondent and the petitioner were living happily as husband and wife and occasionally she used to invite and entertain her office colleagues including co-respondent and things did not

appear to be wrong to this petitioner."

The story of gift does not appear to be correct. In his original application the petitioner did not mention the sweater, instead he stated that a "very costly present" had been given to the co-respondent in the night of Christmas 1976, which suggested that some article of large value was the subject matter of the gift. The main allegation in proof of adultery relates to the incident of 22-1-1978. He went to his village home after taking leave for a fortnight from 15-1-1978, but suddenly returned back to Ranchi on the 22nd January, 1978, in the middle of the leave, and found that Umesh Sinha was in his bed, His box, clothes and tooth brush etc., were also there. The respondent was also in the room. Instead of being repentant the respondent took an aggressive attitude and the petitioner then left the house. Later, Umesh Sinha threatened him and asserted his friendship with the respondent. If this story be found to be correct, it may be permissible to infer that the two respondents were guilty of adultery, but if the evidence and the circumstances in the case are closely examined, they indicate that the petitioner's allegations are not true,

10. The house in which the couple were living belongs to the respondent's father. To give a ring of truth to his story, the petitioner stated in his evidence that he changed his residence after the incident and first stayed with his relative Mr. Kujur and thereafter in the Heavy Engineering Corporation's quarter where he is working. The respondent has asserted that the petitioner was living with her till 9-4-1980 when he after informing her about the present proceeding changed his residence. The change of residence is relevant for ascertaining the truth of the incident as also on the question whether the petitioner must be deemed to have condoned the respondent's misbehaviour (if found to be correct). The petitioner in the first instance did not explain as to why he cut his leave short to return back to Ranchi suddenly. In support of his case that he left the respondent's house, he should have examined Mr. Kujur which he has not done; instead the respondent examined Pratap Kujur, D. W. 4, who is an Advocate's clerk and who stated that the petitioner never stayed with him. Mr. Banerjee described the witness as the junior member of the family of Mr. Kujur, the petitioner's relation, and commented that he should not be believed in absence of the senior member of the family. If the petitioner's version is correct, he should have taken steps for examination of the senior Mr. Kujur, his relation. According to his further case the petitioner later shifted to the H. E. C. quarter, but no evidence has been produced of the same. The petitioner is an employee of the H. E. C. and should have produced some document showing allotment of a quarter to him. Not even a witness has been examined to prove his case. On the other hand, the petitioner has described his residence as railway colony on the several petitions filed in the case on several dates in 1978 and 1980 which contradicts his statement in paragraph 32 of his deposition that after institution of this case, he was not living with his wife in the railway colony. From the evidence on record, it is fully established that the respondent's house is on the outskirts of the railway colony. This corroborates the evidence of the respondent. The evidence of the respondent that the petitioner was staying with her appears to be correct and has also been supported by D. W. 3 Daniel Khalkho and this could be true only if the petitioner's story regarding what happened on 22-1-1978 is disbelieved.

11. The petitioner has claimed in paragraph 11, of his application that his friends and neighbour confirmed that the co-respondent used to stay in the respondent's house during the night. He,

however, could not examine any witness to prove this, excepting P. W. 2 Dipak Sanga, who stated that in Jan., 1978 he had seen both the respondents going inside the house. He, however, did not say that he found Umesh Sinha with any box. If Umesh had, in fact, shifted to the house with his luggage, it is expected that there would be witnesses to prove the fact. On the state of evidence, as it is, I am of the view that the petitioner has not been able to prove his case.

12. Although the petitioner did not mention in his application the fact that he and the respondent had duly adopted a daughter in 1969, as evidenced by Exhibit A, which has been proved by the respondent and not denied before us on behalf of the petitioner, it was stated at the Bar that the adopted daughter is in her early teens and is living with the respondent. If the respondent had been living a dishonourable life, it was expected that the petitioner would not have permitted the girl to live with her. Further, she would have been a relevant witness for the petitioner, if the allegations were true,

13. The respondent also produced a photograph of the petitioner with Rose Toppo, referred to above, and it has been contended on her behalf that although it is the petitioner, who has been leading a questionable life, the respondent is still anxious to resume a normal married life with him both for the sake of the adopted girl and in their own interest. The learned counsel for the parties advanced arguments on the question as to whether the photograph was of 1980 or of an earlier date as stated by the respondent. Mr. Banerjee placed several circumstances to indicate that the respondent's story about the date of the photograph is incorrect. I do not consider it necessary to deal with this point as it does not have much relevance to the main controversy. The admitted position that before the divorce decree could become final the petitioner has been cultivating friendship with another girl and has so far completely ignored her adopted daughter and not contributed towards her up-keep, does not speak in his favour. Apart from these facts, the petitioner must fail on the basis of the findings recorded above.

14. In the result the decree nisi pronounced by the Judicial Commissioner, Ranchi, is set aside, but the parties are directed to bear their own costs throughout This reference case is accordingly disposed of.