Gujarat High Court
Ajitrai Shivprasad Mehta vs Bai Vasumati on 20 June, 1967
Equivalent citations: AIR 1969 Guj 48, (1969) GLR 253
Author: J Mehta
Bench: J Mehta
JUDGMENT J.B. Mehta, J.

1. The petitioner husband has filed this appeal under the Hindu Marriage Act, 1955, hereinafter referred to as "the Act", as his original petition for obtaining decree of the nullity of his marriage or for divorce had been dismissed by trial Court.

2. The short facts which have given rise to this appeal are as under :--

3. The petitioner and the respondent are Brahmins by caste. The petitioner is deaf and dumb from the birth. The petitioner's father originally resided at Umreth, while the original place of residence of the respondent is Vaso. But the parents of both parties had been residing at Ahmedabad since many years. According to the petitioner he was married to the respondent at Vaso on 15th April 1954 according to the religious rites and as per the custom of the community. It is the petitioner's case that he relied upon the representations made by the respondent's father to the petitioner's father. After the marriage the respondent came to reside with the petitioner when he found that her mental condition was defective and she was insane and did not know how to lead a married life with the petitioner. These facts were not known to the petitioner at the time of the marriage and so, the petitioner contended that as the respondent's mental condition was incurable, he was entitled to a decree of nullity of his marriage or in the alternative to a decree of divorce. After the exchange of notices the petitioner has filed the present petition for the aforesaid reliefs. By her written statement, Ex. 24, the respondent denied that the marriage which was legally performed was on the mere representations of her father. The respondent averred that a writing Ex. 93 had been prepared as per the custom of the community at the time of the engagement and the petitioner and his parents and others had seen the respondent, talked with her and given approval to the engagement. There was also another ceremony known as Kunvaro Mandvo and thus the petitioner and his parents had ample opportunities of seeing her and talking to her and observing her. The case of the respondent was that while she stayed with the petitioner, the petitioner and his parents used to taunt her as she did not bear a child even after long time after the marriage and they did not keep her and this petition was filed only to get a divorce so that the petitioner could marry again. The respondent denied that she was mentally defective. The trial Court held that the petitioner had failed to establish that the respondent was an idiot or lunatic at the time of the marriage or that her mental condition had not been disclosed at the time of the marriage. The learned Judge further held that the petitioner had further failed to establish that the respondent was of an unsound mind for the relevant period or that the said mental condition was incurable. Finally, the learned trial Judge held that the petitioner was guilty of delay and even if he had established the ground there was no case for granting the relief. Accordingly, the petition was dismissed. The petitioner has filed the present appeal.

4. At the hearing Mr. Vakil raised two points:--

(1) That the expression "unsoundness of mind" had a wider connotation and would include

(2) On the facts of the case the learned Judge ought to have held that the respondent w

5. In order to appreciate the first contention of Mr. Vakil, it would be proper to c

legislature has considered as adequate to be made a ground for avoiding the marriage and

6. In Titli v. Alfred Robert Jones, ILR 56 All 428 = (AIR 1934 All 273), the Divisio

or partial amentia there was not that marked want of development of the centres of sensorial perception which was present in idiocy- An imbecile has rudimentary intelligence, whereas a feeble minded person has a yet larger amount of intelligence. At page 451 Mukherjea J. observed that the meaning of that terra "idiot", according to Murray's English Dictionary, was stated to be a "person So deficient in mental or intellectual faculty as to be incapable of ordinary acts of reasoning or rational conduct." At page 460 Sulaiman C. J. also held that one could not be an idiot unless his faculties had not at all been developed and he had not acquired any appreciable intelligence. The learned Chief Justice considered the definition of an insane person i.e. a man of unsound mind and observed that there had been difference between the points of view between a medical man and a lawyer on the question of insanity. At p. 457 (of ILR All) = (at p. 282 of AIR) Sir Sulaiman C. J. further pointed out that there were many persons who would be considered insane by medical men who did not come upto the standard of insanity as prescribed by law. The medical science had a long category of various degrees of abnormality which were thought to be insanity, including idiocy, imbecility, feeble mindedness. subjectivity to stupor, exaltations, delusions, impulses etc. Indeed, abnormality in one form or another was considered according to medical books as a species of insanity, but that was not the legal view. In law it was a very high standard and the only test which had been laid down was as to whether the person by reason of unsoundness of mind is incapable of knowing the nature of the act. or that he was doing what was either wrong or contrary to law. "In this Section 84 of the Indian Penal Code the definition was borrowed from the opinions of the fifteen Judges in Danial McNaghten's case. (1843-10 Cl. & F 200) in AIR 1932 All 233, who unanimously laid down that, "to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it he did not know he was doing what was wrong." At pages 461 to 462 (of ILR All) = (at p. 284 of AIR) the learned Chief Justice, therefore, concluded that a medical man's conception of an insane, a lunatic or an idiot was utterly different from the legal conception. The medical opinion that a person was an idiot because by the mere deficiency in reasoning power he was unable to manage his affairs was useless in the inquiry as to whether the person Was an idiot in the eye of law. The test which was applied by the Division Bench was that a person who was capable of understanding what marriage was and its consequences could not be held to be an idiot or a lunatic at the time of the marriage. (See at page 453 (of ILR All) = (at P. 281 of AIR) Mukherjea J. and at pp. 463-465 (of ILR All) = (at pp. 285-286 of AIR) Sir Sulaiman C. J.) The learned Chief Justice also found the following

passage quoted at pp. 466-67 (of ILR All) = (at P. 286 of AIR) from the case of Harrod v. Harrod, (1854) 1 K. & J. 4 very instructive. At p. 8, the Vice-Chancellor explained the two species of unsoundness of mind as follows:

"Unsoundness of mind may be occasioned either by perversion of intellect, manifesting itself in delusions, antipathies, or the like; or it may arise from a defect of the mind. There is no allegation here of anything like a perversion of the mind, or what is more properly called mania. With respect to defects of the mind, they are of two kinds: The mind may be originally so deficient as to be incapable of directing the person in any matter which requires thought or judgment, which is ordinarily called idiocy or the defect may arise from the weakening of a mind, originally strong by disease or some accident of a physical nature, by which memory is lost and the faculties are paralysed, although there is no perversion of the mind, nor any species of that insanity which is ordinarily called mania". The defendant in that case had tried to put forward a case of simple idiocy invalidating the marriage of a lady, who was shown to have been deaf and dumb and of extremely dull intellect. Other people could not make her comprehend anything. She had never been taught to talk with fingers, nor could she read or write; her mother never allowed her to leave the house alone; she was also unable to tell the value of money and she did not know how to give change. The Vice-Chancellor held at page 8: "It is clearly the law that the presumption is always in favour of sanity, and there is no exception to this rule in the case of a deaf and dumb person; but the onus of proving the unsoundness of mind of such a person must rest on those who dispute her sanity". Even on the evidence for the defence alone he remarked that he should not have been disposed to direct an issue on the question. At page 14 the learned Vice-Chancellor observed "I am, therefore, of opinion that there is nothing in this case to show that the plaintiff's mother was of unsound mind and as no case of fraud is alleged there is nothing more to be done". In the result he held that her marriage was not invalid.

The aforesaid decision concisely explains the various terms with which we have to deal with and brings out the subtle distinction between the medical and legal view on the question of insanity. In the case of idiocy, the insanity is congenital and incurable and the mind is originally so defective as to be incapable of directing the person in any matter which requires thought or judgment or in other words, there is such a complete state of amentia from birth or early childhood, that the person is almost without any glimmering of reason at all. On the other hand, in case of lunacy or insanity or unsoundness of mind such mental defect arises from the weakening of the mind, originally strong, by reason of some disease, accident or other such cause resulting in some mental illness by which memory, reason or understanding is lost and the faculties are so paralysed. The distinction between the species of that insanity known as lunacy or mania and mere unsoundness of mind is in the fact whether there is perversion of mind or depravity of reason or only a want of it. The passage in Stroud's Judicial Dictionary at page 2141 clearly brings out this distinction in the following terms:

" 'Unsound mind' which all persons must understand to be a Depravity of Reason, or want of it. Mere eccentricity is not such an unsoundness of mind as will amount to testamentary incapacity. There is an important difference between 'Unsoundness of Mind' and 'Dullness of Intellect' ..... Unsoundness of mind may arise from perversion of the mental powers, and may exhibit itself by means of delusions or strong antipathies, which is called 'Mania'; or it may arise from what may be

termed as detect of mind, as where the mind was originally incapable of directing itself to anything requiring judgment which is 'idiocy' or where a mind, originally strong, has become weakened by illness or age though producing no such insanity as to amount to Mania."

In all these three cases whether of congenital insanity, lunacy or unsoundness of mind, the mental infirmity satisfies the test of legal insanity only when it is to such a degree that a person is unable to understand the nature and consequences of his acts and would, therefore, be considered not responsible for his acts or his acts in the eye of law could not be regarded as his acts at all, Mr. Vakil, however, argued that, "unsoundness of mind" would differ in its import in the context of each legislation. The aforesaid tests evolved in Daniel McNaghten's case, (1843-10 Cl. & F 200) and embodied in Section 84 of the Indian Penal Code might be appropriate in fastening criminal responsibility upon a person in cases where mens rea was a necessary ingredient of the offence, but they would not be appropriate while considering the unsoundness of mind as a ground of divorce. Mr. Vakil also pointed out that under Section 12 of the Indian Contract Act, the expression "unsoundness of mind" was used in the context of consent being given for entering into a valid contract where a person must understand and form a rational judgment as to its effect before entering into such a contract.

Mr. Vakil further argued that in a matrimonial legislation the term "unsoundness of mind" should be widely interpreted, especially when the Legislature had purposely used a different phraseology in Section 13(1) when mental infirmity was considered as a ground of dissolution of marriage as distinguished from the mental defect contemplated in Section 5(ii) when it was considered as in the context a necessary condition for the marriage and which made it voidable under Section 12(1)(b), in which case, it must be such a grave mental disorder which must be of the nature of "idiocy or lunacy". Mr. Vakil in this connection vehemently relied upon the decision of Phillimore J. in Whysall v. Whysall, 1959 (3) All ER 389, where the learned Judge had interpreted the expression "incurably of unsound mind" in a similar matrimonial legislation in England. On parity of reasoning Mr. Vakil argued that we should include even feeble-minded persons and even persons of dull intellect who would not be able to lead a full matrimonial life as rational persons duly appreciating the marital obligations and rationally controlling their affairs in the society and in married life. It would be futile to continue such an unhappy marriage tie.

7. There is much force in Mr. Vakil's contention that McNaughton Rules could not be strictly applied in civil cases and especially in a matrimonial legislation as their strict application would lead to absurd results, and as in civil cases they could not be applied in the same way. The first limb of the rules may afford a good test, but as far as the second limb is considered, it is interpreted in criminal law so that "wrong" means contrary to law and not as morally wrong. (See, Section 84 I. P. C.) Obviously, this meaning cannot be applied to divorce cases. To pay no heed to the consequences of insanity other than that of knowing what one is doing would be to introduce an unjustifiable distinction. There would be neither reason nor logic in making any distinction between these two types of persons who are in fact equally irresponsible so as to permit one to be divorced while not the other, on the ground that his type of insanity does not fall within the strict rigour of those rules. When insanity deprives a man completely of choice or responsibility or volition or even moral judgment so that a man's acts are not his acts, we must hold that the insanity is of that degree which

must be considered as sufficient. Therefore, these Mc-Naughton Rules or their equivalent can be safely accepted as working rules without necessarily picking any one of them to the exclusion of others. That is what is done by the Division Bench in the aforesaid decision of ILR 56 All 428 = (AIR 1934 All 273) when the Legislature intended that if the mental infirmity, short of idiocy or lunacy, should not be a ground on which a marriage could be avoided or in other words, if such a person, whose mental defect did not reach this serious state of insanity known as idiocy or lunacy, could enter into a valid marriage tie, it would be absurd to hold that on the very same ground of mental defect which existed at the time of such marriage, it would be open to dissolve the marriage tie by giving such a wide interpretation to the term "unsoundness of mind" in Section 13(1)(ii), Feeble-minded persons or persons of dull intellect in whose cases mental infirmity is not of such a grave mental disorder as to make them incapable of knowing the nature and consequences of their acts or, in other words, who can understand what marriage is as well as the consequences of a marriage tie cannot be considered as persons of "unsound mind" in the legal sense as contemplated in Section 13(i)(iii). We also do not agree with Mr. Vakil that Phillimore J. has laid down any different test in 1959(3) All ER 389. In fact the learned Judge at page 395 observes that in the context of the matrimonial legislation and bearing in mind the definitions afforded by the Oxford Dictionary, the phrase "unsound mind" must have been intended to describe a state of mind variously called unsoundness of mind or insanity and no distinction was meant between the two phrases. At page 396 also the learned Judge observes that the practical test of the degree of the unsoundness of mind or incapacity of mind required for such insanity must be found in the definition of a lunatic in Section 90 of the Lunacy Act, 1890, as a person, "incapable of managing himself and his affairs, provided it was remembered that "affairs" include the problems of society and of married life and the test of ability to manage affairs was that to be required of the reasonable men. Therefore, the learned Judge evolved this test only in the context of legal insanity alone when it reached that high standard which was required in law and did not intend to cover all kinds of mental abnormalities or deficiencies as contended by Mr. Vakil. At page 396 the learned Judge considered the meaning of the term "incurably". At page 397 he finally held that in decid-

ing whether a person "is incurably of unsound mind", the test to be applied is whether by reason of his mental condition he is capable of managing himself and the affairs and, if not, whether he can hope to be restored to a state in which he will be able to do so. Of course he added the rider that the capacity to be required was that of a reasonable person. This test, therefore, really proceeds on the footing that the person is insane. A mere mental defective, whose state of mind being congenital would be incurable would not satisfy this test of insanity as in spite of arrested or incomplete development of his mind he would be able to understand the nature and consequences of his acts and there would be no justification to dissolve the marriage tie. We therefore, do not agree with Mr. Vakil that the expression "incurably of unsound mind" should be so widely interpreted as to cover such feeble-minded persons or persons of dull intellect who understand the nature and consequences of their acts and are able, therefore, to control themselves and their affairs and their reactions in the normal way.

8. Now coming to the facts of the present case, Mr. Vakil frankly conceded that he cannot bring the present case under Section 12 read with Section 5(ii) as the respondent could not be considered as an idiot or as a lunatic. The respondent did not suffer from such mental infirmity as would make her

an idiot or a lunatic. The only evidence which was relied upon by the petitioner in this connection was of the priest Motilal, Ex. 96, who stated that at the time of her marriage the respondent was not by herself able to perform certain ceremonies and that she had to be helped by another girl Saroj who was sitting by her to per-form those ceremonies. In cross-examination he had to admit that even educated persons might commit mistakes in performance of the ceremonies which they corrected on being explained and that in his experience some women had to be given instructions in greater detail than others. The petitioner has also relied upon the maternal uncle Hiralal Dave, Ex. 98, who supported the story of the priest that the respondent was not able to follow instructions at the time of the marriage ceremony. But in cross-examination he had to admit that though he was present near the place where the marriage ceremony had taken place and had seen the girl at the time, he had not felt that the respondent had any mental defect. The respondent and her witness Sarojben, Ex. 106, have emphatically denied this allegation. Even at best the allegation only goes to show that the respondent had to be explained properly in order to enable her to partake in the various ceremonies at the time of the marriage. This would not be any evidence of a mental defect in the petitioner which made her completely unable to understand the marriage ceremony or the import of marriage. The respondent had Riven evidence and the learned trial Judge had made a note how she stood the test of a searching cross-examination. She merely did not understand complicated questions but she gave all proper replies to simple questions. Mr. Vakil, therefore, rightly did not rely upon this ground under Section 12 for a decree of nullity as a condition under Section 5(ii) was not fulfilled by the respondent as the alleged mental infirmity in her case was completely short of idiocy or lunacy.

9. Mr. Vakil, however, strongly relied upon certain other symptoms from which he wanted me to infer the petitioner's unsoundness of mind in the context of the aforesaid Phillimore J.'s test. Mr. Vakil argued that it was seen on the petitioner's evidence that the respondent was incapable by herself of managing herself and her affairs, including problems of society and of marriage life, judged by the ability of a reasonable person to manage such affairs, and such incapacity in her case being congenital, was necessarily permanent and incurable. Mr. Vakil in this connection strongly relied upon the evidence of Dr. Rahimutullakhan Ahmedullakhan Hakim, Ex. 101, who is an M.B.B.S. Psychiatrist at the Civil Hospital and B. J. Medical College and an Honorary Consultant at the Mental Hospital. The doctor admitted that he had only once examined the patient and that too without any clinical examination. The doctor has opined and given certificate Ex. 102. He stated that in his opinion the patient was suffering from mental deficiency by birth and this deficiency which he found in her was not curable. She was a low grade moron. She would not be in a position to carry out usual household duties. It is well settled, that an expert opinion would be useful only when the expert gives grounds on which he holds such opinion. The doctor has admitted that while the patient would be clinically examined past history of the patient would be taken into consideration for coming to the conclusion and if the past history was not correctly given there was a likelihood of arriving at an incorrect decision, and that without a clinical examination there would be a difference in the conclusion in the degree of mental deficiency. The doctor further stated that over and above the past history the doctor must ask questions to formulate the decision and that in such personal examination if the patient was nervous or shy, she might give incorrect answers. In fact, he stated that he would definitely like to see the patient again to confirm the diagnosis. Mr. Vakil was unable to point out from this whole evidence of Dr. Rahimtullakhan as to what was the previous history

given or as to what were the questions and answers which led him to the present conclusion. In absence of such data or grounds of opinion the expert opinion would be practically useless for our purpose. As Mukerjee J. pointed out in ILR 56 All 428(450) = (AIR 1934 All 273 at p. 280) the opinion of such an expert would carry very little weight unless it was supported by a clear statement of what the doctor noticed and on what he based his opinion. The expert should, if he expected his opinion to be accepted, put before the Court all the materials which induced him to come to his conclusion so that the Court, although not an expert, may form its own judgment on these materials. In fact to the Court question the doctor had stated that in his opinion he could not call a person "moron low" to be an idiot Idiocy was mental deficiency of the lowest grade. Thereafter, in answer to the questions by the petitioner's advocate the doctor explained the difference between an idiot and a lunatic and he said that he would call a person an idiot who could not realise danger and would not be able to speak even or carry out all the routine habits of a human being. In fact the doctor's opinion of an idiot could not differ from the accepted sense of the term "idiot" where there must be complete absence of reason or judgment and the doctor rightly stated that he did not consider the petitioner idiot. Similarly, the doctor stated that the petitioner could not be considered a lunatic. In fact what is material for our purpose is lunacy as understood in the legal sense and not in the medical sense. We have mentioned this evidence of Dr. Rahimutullakhan only for showing that there was nothing in his entire evidence which would establish idiocy, lunacy or unsoundness of mind of the respondent. The opinion of the doctor that the respondent could not carry out usual household duties would be merely ipse dixit of the doctor unsupported by any reason or ground or data. Therefore, this evidence could not help the plaintiff.

10. Mr. Vakil next relied upon the fact that from the evidence of the petitioner's witnesses it was clear that:

(1) the respondent did not know how to dress her clothes and she kept the buttons of her blouse open as stated by the petitioner in his evidence, Ex. 54;

(2) that though she was Brahmin she did not take bath daily;

(3) that she did not distinguish between cereals and vegetables as she had stated that she did not know what use may be made of Mug and that Chola was cooked after putting into water and that it was not eaten, but applied on the head;

(4) that she had no control over her nature discharges as she passed urine and stools even in the kitchen;

(5) that she did not recognise the person and did not give welcome to the visit and she had no sense and recollection of places, roads, neighbours etc., or (6) she required to be helped.

Mr. Vakil relied upon these symptoms as having been established by the evidence of the various witnesses of the petitioner. It is true as the learned Judge himself has noted the demeanour of the respondent that the respondent is slow of understanding complicated questions and she was not able to answer some questions and some answers were not quite correct. But she was sub-normal in

her mental capacity and she was able to give relevant answers to simple questions and the learned Judge has rightly stated that the respondent had stood the test of a searching cross-examination. Merely because she has a weak memory of the roads and places or names of relatives, it would not make her a person of unsound mind. As regards her absence of control over urine and stools, it is only (Sumanben?), Ex. 99 who had stated that she was passing stools and urine in the kitchen but no such suggestion was made to the respondent. The only suggestion to her was that she spoiled her clothes by passing urine or stools and she had denied the same. The learned Judge has rightly not believed this story which was practically not conveyed to anyone else by Sumanben and was not even put up to the respondent. Merely because she did not take bath daily it could not be said that she did not know how to take bath. In fact, in cross-examination of the respondent the petitioner had gone to the extent of suggesting that the bath was given to her by her mother-in-law, which was not even the story of Sumanben, the stepmother Ex. 99. Similarly, a vague suggestion was sought to be made to the respondent that she did not know how to comb her hair and that her mother used to comb her hair. Merely because some buttons of the blouse might have been seen open by the petitioner it is too much for Mr. Vakil to argue that the respondent did not know how to dress. Besides even the petitioner himself had to admit that the respondent did cooking even though his mother denied the same. It may be that bread prepared by her may not be to the satisfaction of the petitioner or his family. Even as regards welcome offered to the guests or talks with them, it would also depend on the coldness with which the guests even might treat such a person, who at best can be said to be of a dull intellect or a feeble minded person. Therefore, the entire evidence makes it very clear that the respondent is able to manage herself and all her affairs in her! own simple way and she would be able to cope with the obligations of a marital life. Even if on some occasions, she needed better instructions or advice, she was able to look after herself and her affairs all alone and is not even seriously sub-normal as it is sought to be suggested by Mr. Vakil. Therefore, in any event, in the present case, the mental defect is not of such a degree or extent which makes the respondent incapable of managing her self and her affairs and even on the practical test adopted by Phillimore J., on which Mr. Vakil strongly relied upon the respondent would not be a person of unsound mind. When this ground of unsoundness of mind is relied upon, as a ground for dissolution of marriage or for avoiding the marriage, the said ground must be proved by cogent and clear evidence beyond reasonable doubt so as to satisfy the Court. There is not an iota of evidence, however, in the present case, for establishing the ground of unsoundness of mind or of idiocy or lunacy and the petitioner was not, therefore, entitled to any relief under Section 12 or Section 13 of the Act.

11. In this view of the matter it is not necessary for me to consider whether the alleged mental defect was proved to be congenital incurable and whether the petitioner was disentitled to any relief because of any delay.

12. In the result, this appeal must fail and is dismissed with costs.