

Allahabad High Court

Cyril Rowland Gibbs vs Mrs. Ellen Mabel Gibbs And Anr. on 15 March, 1933

Equivalent citations: AIR 1933 All 427

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JUDGMENT Young, J.

1. This is the petition of Cyril Rowland Gibbs of Allahabad praying that his marriage with Ellen-Mabel Gibbs should be dissolved and that he should have custody of the child. G. D. Thorpe, a Police Inspector of Cawnpore, has been impleaded as corespondent. The petitioner alleges the adultery of his wife' with Thorpe. The petitioner married the respondent on 29th October 1928 in Allahabad, where they have lived ever since. They are domiciled in India, and this Court has jurisdiction to hear the petition. There is one son of the marriage at present aged 3 1/2 years.

2. About the beginning of November 1932 the husband and the wife were staying with the mother of the latter in Allahabad. The co-respondent was then on leave, and, being an old friend of the family of the wife, came to reside with them for 2.1/2 months. There is no evidence in this case during this time of any undue familiarity or guilty affection between the respondent and the co-respondent. The only evidence that there is is that the co-respondent used to take Mrs. Gibbs out on his motor-bicycle usually with her own sister and also to dances in the evening. There is nothing in this to establish guilty affection. On 9th January 1933 the petitioner left for Moradabad to stay with some relatives. Shortly afterwards Mrs. Cearns, the mother of the wife, the wife's sister, and a brother, left Allahabad and went to Moradahad. The petitioner says that when he asked why his wife had not come as well he was told that she had gone to Calcutta to learn nursing. He at once left Moradahad and returned to Allahabad. He then discovered that his wife and the co-respondent had left Allahabad and had gone to Cawnpore. He followed to Cawnpore and found them living together in Thorpe's bungalow. No one else was then residing there. He asked his wife to return with him to Allahabad and she refused. Mrs. Gibbs remained at Cawnpore alone in the bungalow with the co-respondent for one week. Mrs. Gibbs' sister then came from Moradabad and stayed with them. On 5th February the sister left the bungalow and for another four days Mrs. Gibbs and Thorpe were alone together. The sister returned and this curious party remained living together in Cawnpore until shortly before the hearing of this case.

3. Both the respondent and the corespondent have been in the box. Mrs, Gibbs says that she left the house in Allahabad when her mother and sister and brother left, because her husband had not left her any money and had told the co-respondent to look after her. This is unlikely, as the corespondent had no money and had actually borrowed from the petitioner. She saw no harm therefore she says, in going to Cawnpore and staying with the co-respondent alone in his bungalow. She did it deliberately. She further says that they lived in separate rooms at different ends of the bungalow, and she denied adultery. The co-respondent unfortunately tells a different story. He says that Mrs. Cearns left her daughter for one night in Allahabad alone in the house with him because he had to return to duty at Cawnpore the next day and Mrs. Gibbs was to go to Meerut to stay with some friends. He says that Mrs. Cearns told him that as Cawnpore was on the way to Meerut, it would be a good thing if he looked after Mrs. Gibbs as far as Cawnpore. The co-respondent had been on medical leave and was without money. He says that he hoped,, when he got to Cawnpore, to draw

leave pay which he thought was due to him,, and that out of this money he would, be able to pay the travelling expenses of Mrs. Gibbs to Meerut. When however he reached Cawnpore, he found that he could get no money, and as. he was new to Cawnpore and knew nobody, there, he could not borrow money to send Mrs. Gibbs on to Meerut. The only thing left was that he should take Mrs. Gibbs to live with him to his bungalow.

4. There are three weaknesses about this story. The first is, as I have-pointed out above, that it is a completely different story from that of the wife, and, secondly, if the story were true, one would have expected an innocent man acting purely as a friend to have written or telegraphed when he got to Cawnpore to the husband! for the necessary money to send Mrs. Gibbs on to Meerut. The co-respondent however did not do this. He could not explain why he did not communicate with the petitioner. Lastly, Mrs. Gibbs-could easily have borrowed money from her aunt who lived opposite Mrs. Cearn's house in Allahabad. Further-when a couple of days later the husband arrived at Cawnpore and demanded his wife', there was no question of asking the husband for necessary funds-to send his wife to Meerut. In fact,. Thorpe did nothing to assist the husband in his desire that his wife should, return with him to Allahabad.

5. These are the facts, I am asked by counsel for the petitioner to infer that adultery has been committed. On the other hand, counsel for the wife contends strongly that mere evidence of opportunity is not enough, there being, no evidence of any guilty affection or undue familiarity between the respondent and the co-respondent. It is not necessary to prove guilty_ affection in every case. Adultery for instance may be committed with a prostitute and there are the well-known cases where divorces are granted on "hotel" evidence. There is an old legal maxim, in Scotland which runs as follows: "Solus cum sola in suspecto loco non presumitur dicere pater twster," which being translated means that when a. man and a woman are found together under suspicious circumstances, it cannot be presumed that they are saying, their prayers. I am satisfied that on the authorities both in India and in, England, circumstances of this sort can only lead to one inference, that is, that adultery has been committed. To rule otherwise would be an extremely dangerous precedent. Section 114, Evidence Act, enacts that: ' the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events and human conduct.

6. It seems to me that any reasonable person, on the facts of this case, must come to the conclusion that the respondent and the co-respondent committed adultery in the latter's bungalow in Cawnpore. Sir William Scott many years ago in England laid down this principle.

It is a fundamental rule, that it is not necessary to prove the direct fact of adultery ; because 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 held, no protection whatever could be given to marital rights. The only general rule that can be laid down upon the subject is, that the circumstances must be such as would lead the guarded discretion of a reasonable and just man to the conclusion.

7. When one considers in this case not only the fact that the respondent and the co-respondent stayed together for this long time alone in the bungalow in Cawnpore, but also that the husband came to bring his wife back and she refused to return; the fact that no attempt was made by the co-respondent to obtain the money necessary for the wife's journey either to Meerut or back to her husband at Allahabad, and the fact that the wife's story of how she came to go to Cawnpore so completely differs from that of the corespondent's ; it is impossible to avoid the conclusion that the reason for this state of affairs was that there was guilty affection. This coupled with the ample opportunity afforded by being alone in the bungalow must lead, in my opinion, any reasonable person to the necessary conclusion that adultery had been committed.

8. Counsel for the wife however relies strongly on the recent case of *Farnham v. Farnham* (1925) 133 L.T. 320 decided by Lord Merrivale, the President of the Divorce Division in London. He held that the Court was not bound to infer adultery from the evidence of opportunity alone. Lord Merrivale in that case declined to grant a divorce on the usual hotel evidence which now it is customary to give in divorce' cases in England. He refused to infer from the fact that a man and a woman had stayed the night together in bed-room in an hotel that adultery had been committed. That however is a very different case from this. Everyone knows that as the Divorce law is that of a husband and wife, however much they disagree, should be bound together, unless adultery is proved, married people wishing to separate arrange for some woman to go to an hotel with the husband. The man and woman register themselves as husband and wife in the hotel books, occupy the same bedroom, and in the morning ring the bell for the maidservant to bring tea. The maidservant provides the necessary evidence that she has seen the man and woman' together in bed. It is a well-known fact however that in many cases the only time that the ' man and woman are in bed together is when the maidservant comes into the room. The man may not have the slightest intention of committing adultery, but only goes through this farce in order to deceive the Court and so enable his wife to obtain a divorce. This being the well-known state of affairs, it is not surprising that the learned President of the Divorce Division refused to infer adultery from these facts. Here the facts are entirely different. Adultery, then, in my opinion, having been proved, there will be a decree nisi with costs against the co-respondent. The husband will have the custody of the child. I have no doubt he of ill make arrangements for his wife occasionally to have access to the child.