

Bombay High Court

Devyani Kantilal Shroff vs Kantilal Gamanlal Shroff And Anr. on 21 August, 1962

Equivalent citations: AIR 1963 Bom 98, (1963) 65 BOMLR 24, ILR 1962 Bom 706

Bench: Patel

JUDGMENT

1. This is an appeal by the wife against a decree of dismissal of her petition for divorce on the ground of adultery of her husband with respondent No. 2.

2. The petitioner was married to respondent No. 1 on the 15th of February 1947. After marriage, for a number of years they lived as hus-

band and wife in Karim Building at Kanda Wadi on the and floor. The petitioner left respondent No. 1 in or about the end of 1958. At that time respondent No. 1 had two rooms in Karim Building. Out of these two rooms, he gave one room on leave and licence within a short time after the petitioner left, while the main residen tial room in which the petitioner and respondent No. 1 were residing he says he gave on leave and lincence in the month of April 1960. The pre sent petition for divorce on the ground of adultery was filed on 23rd February 1961.

3. She alleged that since about 1956 respondent No. 1 came in contact with respondent No. 2, who was living in Sikka Nagar with her husband and her two children. Gradually relations between respondents Nos. 1 and 2 became intimate. When ultimately the petitioner asked respondent No. 1 about his relation with respondent No. 2, he told her that she was his wife and beat her and drove her away. Even before that date, there used to be quarrels on this account. On the iast occasion, when she was beaten and driven out of the house, she went to the house of Savitiiben, the sister of respondent No. 1, and from there called her mother. In the house of Savitriben also respondent No. 1 beat her in the presence of Savitriben and her mother, and abused her mother as well, after which her mother took her to her own house and since then she is living with her parents. According to her, within a short time after she left the rooms in Karim Building, respondent No. 1 started living with respondent No. 2 who had about the month of August 1959 shifted to chawl No. 3 at Pipalwadi. Since then he was living with her in adultery. She therefore was entitled to a decree in divorce.

4. Both the respondents denied the allegations made by the petitioner. Respondent No. 1 contended that respondent No. 2 was a friend of the petitioner herself and whenever he visited respondent No. 2 at her husband's place he went along with the petitioner and never alone. He alleged, on the other hand, that in or about 1956 and thereafter several friends of the petitioner used to visit his rooms in his absence and when he was told about it by the neighbours he remonstrated with the petitioner and that is why she left him. He admitted that he became, a paying guest of respondent No. 2 in or about August 1959 but was only taking his meals at her place. Both the respondents further admitted that it was only in the month of April 1960 that respondent No. r came to live with respondent No. 2 as a paying guest at Pipalwadi. Both of them alleged that during the time that respondent No. 1 was a paying guest, he was sleeping in the lobby throughout the period except in the months of July to October when because of the rains he was sleeping inside the room. Both of them further admitted that during the pendency of the suit whenever respondent No. 1 came from

Bulsar he lived with respondent No. 2. Respondent No. 2 admitted that since about October 1958 her husband was not living with her but went to live with his brother and that she was compelled to vacate that room in or about June 1959 after which she came to live at Pipalwadi. She asserted that at no time had she any adulterous intercourse with respondent No. 1 and that the allegations were false.

5. It is on these pleadings and on admissions of the parties that the issue as to whether or not it is established that respondent No. 1 lived in adultery with respondent No. 2 must be decided.

6. The principles regarding the nature and burden of proof in all such cases where adultery is alleged against one of the spouses by the other spouse, are well-settled. The parties are governed by the Hindu Marriage Act, 1955. The plaintiff claims relief under Section 13(1) on the ground of husband's adultery. Under Section 23 the Court can grant relief only, if it is satisfied that any of the grounds, for granting relief exists and other conditions are fulfilled and not otherwise. A similar question arose in a different form in *Sushila Mahendra v. Mahendra Manilal*, 61 Bom LR 431 : (AIR 1960, Bom 117), before a Division Bench of this Court of which I was a member under Section 12(1)(d) of the Hindu Marriage Act, 1955. We reviewed the case law and held that the petitioner in such a case must prove the allegations beyond reasonable doubt, in other words that "satisfied" read with the words "but not otherwise" mean satisfied beyond reasonable doubt. In *White v. White*, , while considering similar provisions of the Indian Divorce Act where similar words in Sections 14 and 7 are used, the Supreme Court following the case of *Preston-Jones v. Preston Jones*, 1951 AC 391, held "that the standard of proof in divorce cases would be such that if the Judge is satisfied beyond reasonable doubt as to the commission of a matrimonial offence, he would be satisfied within the meaning of Section 14 of the Act. The terms of Section 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."

The reason of such a strict rule is not far to seek. A finding as to adultery or some such matrimonial offence has got very serious consequences inasmuch as it affects the status of a party, and it is on grounds of public policy that such a strict rule of proof is required in all such cases.

7. This however cannot and does not necessarily mean that the Court expects direct evidence by way of photographs or of eye-witnesses who have seen actual adultery or that it requires the employment of detectives peeping through key-holes and deposing about adulterous intercourse. The burden is no more than in a criminal case where the consequences to an accused are equally serious. It only means that there must be evidence, either oral or circumstantial in nature, from which the Court can be satisfied beyond reasonable doubt that the alleged offence is made out. In *Woolf v. Woolf*, 1931 P 134, the Master of the Rolls said;

"The Petitioner is under no obligation to show adulterous inclination generally on the part of the respondent. In my opinion, if evidence is given in good faith which under all but the most unusual circumstances is clear evidence of adultery, it is the duty of the Court to act upon it, unless the King's proctor can bring forward cogent evidence to rebut the obvious presumption. In *Loveden v. Loveden*, (1810) 2 Hag Con 1(2), Sir William Scott said that it was not 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 held, no protection whatever could be given to marital rights".

The Court must have regard to the usual reluctance of neighbours to get involved in giving evidence in such cases and consider more the quality rather than quantity of evidence.

8. A case must be judged having due regard to the social conditions and the manner in which parties are accustomed to live. It is not necessary in every case, therefore, where cases of ordinary middle class come before the Court to require evidence that the respondents were sleeping in one room by themselves. If there is evidence enough to show that they had reasonable opportunity of having sexual intercourse in the conditions of life in which they live for days together then the Court may be justified in raising an inference of adultery.

(After discussing the evidence (paras 9-34), His Lordship concluded.) The circumstances which I have discussed above, when put together and weighed, must, lead only to one and one inference and that is that respondents Nos. 1 and 2 were and are living in adultery. As stated by me in the beginning of the judgment, the burden of proof is no more than in a criminal case where the consequences are far worse. Even in a criminal case it is not the quantity but the quality of the evidence that is the governing factor, and the Court does not hesitate, if it accepts the evidence, even if only oral to convict an accused. The circumstances, which I have narrated above clearly indicate the guilt of both respondents 1 and 2 and there could be no reason to hold otherwise.

25. I accordingly answer the only issue, which arises in the case, in the affirmative, set aside the decree made by the learned trial Judge and direct that the marriage between the petitioner and the 1st respondent be and is hereby dissolved. Taking all the circumstances into account including the fact that in the trial Court the case went on for about 7 days, it seems to be proper that in the trial Court, Counsel's fees should be certified at Rs. 350/- in all. The costs in the trial Court which the respondent No. 1 will pay to the petitioner will, therefore, be the taxed costs over and above the Counsel's fee certified at Rs. 350/-. So far as the present appeal is concerned, I certify the total costs at Rs. 350/- Credit to be given for Rs. 150/- which respondent No. 1 had deposited in pursuance to my order dated 1st of February 1962.

26. The case is remanded to the learned Judge for determination of alimony to be paid by respondent No. 1 to the petitioner. Pending the decision by the trial Court, the order in respect of interim alimony made earlier in this proceeding will continue to be operative. Office to draw up a decree in respect of interim alimony so as to make it executable.

27. Order accordingly.