

Earnest John White

Vs

Mrs. Kathleen Olive White and Others

Civil Appeal No. 19 of 1956

(N. H. Bhagwati, J. L. Kapur, P. B. Gajendragadkar JJ)

10.03.1958

JUDGMENT

KAPUR J. -

This is an appeal with a certificate under s. 56 of the Divorce Act (IV of 1969) (hereinafter called the Act) against a judgment and decree dated July 21, 1954, of the High Court of Patna dismissing the husband's suit. The husband who is the appellant sued his wife who is respondent No. 1 for dissolution of marriage on the ground of her adultery with two co-respondents now respondents Nos. 2 and 3. The suit was tried in the High Court by Shearer J., who dismissed the suit and this decree was on appeal confirmed by the Appeal Court. The question as to the legality of the certificate granted was raised but in the view that we have taken it is not necessary to decide this question.

The husband was married to the wife at Kharagpur on February 3, 1943, and there is no issue of the marriage. The parties thereafter resided at "Rose Villa" at Samastipur and respondent No. 2 was residing with his mother in an adjoining house called "Sunny Nook". The husband alleged various acts of adultery between the wife and the other two respondents. As regards allegations of adultery of the wife with respondent No. 3, the High Court has found against the husband and these findings have not been challenged before us. The allegations of adultery between the wife and respondent No. 2 were also held not proved. In appeal before us the husband has confined his case to the acts of adultery alleged to have been committed at the Central Hotel, Patna where the wife and respondent No. 2 are alleged to have resided together between July 25, 1950 and July 28, 1950, under the assumed names of Mr. and Mrs. Charles Chaplin. The wife pleaded that she came to Patna solely with the object of having her tooth extracted and returned to Samastipur the same day and that she had to come alone as in spite of her request the husband refused to accompany her. Respondent No. 2 Pleaded that he came to Patna with his mother "in connection with seeking employment under the Superintendent Of Police, Anti-Smuggling Department, also in connection with mother's tooth trouble and for household shopping". He also pleaded that he stayed with his mother in the same room under his own name and not under an assumed name.

The trial judge found that the wife and respondent No. 2 and the latter's mother stayed in two rooms in the Hotel Nos. 9 & 10 from July 25, 1950 to July 28, 1950. He accepted the testimony of the Manager of the Hotel, Cardoza P.W. 3 and also of the sweeper Kira Ram P.W. 4. He found that the wife and respondent No. 2 were seen by Kira Ram in room No. 10 and also that the party, i.e., the wife, respondent No. 2 and the latter's mother were served morning tea in one room which they had together but he did not infer any acts of adultery from this conduct. The document Ex. 8 dated November 22, 1950, but actually written earlier was held by the learned Judge to contain "a large

substratum of truth". The Appeal Court (S.K. Das C.J. and Ramaswami J.) agreed with the findings of the trial judge but they also were unable to draw the inference of the commission of adultery from the evidence. In appeal it was contended that the findings of the courts below were vitiated because certain pieces of evidence had been misread, some ignored and as a matter of legitimate and proper inference the court should not have arrived at any other conclusion but that wife was guilty of adultery with respondent No. 2.

This Court will not ordinarily interfere with findings of fact given by the trial judge and the Appeal Court but if in giving the findings the Courts ignore certain important pieces of evidence and other pieces of evidence which are equally important are shown to have been or misread and misconstrued and this Court comes to the conclusion that on the evidence taken as a whole no tribunal could properly as a matter of legitimate inference arrive at the conclusion that it has, interference by this Court will be called for. (See State of Madras v. A. Vaidanatha Iyer [A.I.R. 1958 S.C. 61, 64]; Purvez Ardeshir Poonawala v. The State of Bombay [Cr. a. 122 of 1954, decided on December 10, 1957]; Stephen Seneviratne v. The King [A.I.R. 1936 P.C. 289, 299]).

The Central Hotel, Patna, which is alleged to be the scene of adultery by the wife had only 10 rooms, which were all single, At the whenever necessary additional beds were put in. At the relevant time M.C. Cardoza P.W. 3 was employed as its Manager, Kira Ram P.W. 4 as a sweeper, Abdul Aziz P.W. 5 and Usman Main P.W. 6 as bearers. Kira Ram identified the wife as the lady who has stayed at the hotel with respondent No. 2 but the other hotel servants although they were shown the photograph of the wife and also saw her in court were unable to recognise her as the person who stayed with respondent No. 2. But they did identify him as the gentleman who had stayed in the hotel along with two ladies.

Examined by counsel Kira Ram stated:

Q. "(Pointing out to wife) I ask you, do you know this lady ? A. Yes. Q. Did they ever visit your hotel ? A. Yes. Q How long ago ? A. About 9 or 10 months ago. Q. How long did they stay there ? A. About 4 or 5 days. Q. What room did they occupy ? A. Room No. 10".

He was unable to say as to the number of beds in room No. 10 nor is there any other evidence in regard to this. He also stated :

Q. "During their stay for these 4 or 5 days in your hotel, did you go to clean their both room ? A. Yes. Q. Did you see them in that room whenever you went ? A. Yes, whenever I used to go to sweep the room I found Memsahab and Sahab there."

Questioned by the Court the witness said :

Q. "Can you remember was there any other Memsahab with these two ? A. There was another Memsahab who lived in room No. 9.

Q. What was she like young Memsahab or what ? A. She was not very old, but she was old."

And this obviously refers to respondent No. 2's mother. The evidence of Kira Ram therefore shows that the wife and respondent No. 2 occupied one room, room No. 10. No question was put to this witness as to his hours of duty nor was the manager Cardoza asked any thing about it but another

witness Abdul Aziz bearer P.W. 5, was asked about it as follows :

Q. "What are the hours of work of the sweeper ? A. He comes at 7 a.m. and he leaves in the evening. He sometimes goes away at about 11 and 11.30 a.m. or 12 room".

Similarly no questions were put to Kira Ram about the state of habillement of the wife and respondent No. 2 and the witness never deposed about this fact. The learned trial Judge erroneously thought that when Kira Ram spoke of the wife and respondent No. 2 he "speaks as if 'they' were fully dressed and not en deshabille" and the Appeal Court took this finding to be "as if this witness's evidence showed that both of them were fully dressed". The Appeal Court also seems to have misdirected itself in regard to the duty hours. It said "the sweeper concedes that he was on duty from 6 a.m. to 11 a.m." There is also evidence which has not been rejected that morning tea was served to all the three, i.e., the wife, respondent No. 2 and the mother of the latter in the same room. The statement of Kira Ram that the wife and respondent No. 2 occupied the same room receives corroboration from Ex. 6 the hotel bill and receipt dated July 29, 1950 for room No. 10 in the name of Mr. and Mrs. Charles Chaplin. This document even though contemporaneous with the events under consideration and strongly corroborative of Kira Ram's evidence and of statement of Cardoza that when Mr. and Mrs. Charles Chaplin "stayed in the hotel, they stayed in their own room" does not seem to have been brought to the notice of either of the Courts below. Because of the infirmities pointed out above the import of the testimony of Kira Ram which has in the main been accepted by both the Courts below has been missed and its necessary consequences ignored.

Then there is the evidence as to disappearance of the entry in the Hotel Visitor's Book which was in the handwriting of respondent No. 2. This entry was in the assumed name of Mr. and Mrs. Charles Chaplin from Hong Kong but when he (respondent No. 2) was asked to fill in the Foreigner's from the entry was changed from Hong Kong to Samastipur. The entry itself could not be produced in Court because as deposed by Cardoza, respondent No. 2 came to the hotel and by managing to send the hotel servant away from the room where the Visitor's Book was kept, he tore off the pages containing this entry. This fact receives support from the complaint which Cardoza made to the police on December 5, 1950, and the entry in regard to this complaint made in the Station House Diary of same date. Both these documents have been produced as Exs. 1/1 and 1/2. The significance of this piece of evidence lies in the fact that it was done after the husband started collecting evidence of adultery and after he and his sister had inspected the entry which according to his statement was in the handwriting of respondent No. 2.

The reason of the wife's visit to Patna was tooth trouble. After her tooth was extracted she did not see her Dentist again even though he had asked her to do so. Her version is that she returned to Samastipur the same evening which the Courts below have not accepted. Thus it shows that she stayed on at the Central Hotel, Patna for four days with respondent No. 2 without any reason being given by her and so far as the hotel bill and receipt Ex. 6 goes, the hotel charges for her stay were paid by "Charles Chaplin", i.e., respondent No. 2 and not by her. This fact has again escaped the notice of both the Courts below. And this is more in consonance with guilt than innocence of the wife.

There are then the statements of J.A. Baker P.W. 8 and T.H. O'Connor P.W. 9 to the effect that in September 1950, at the house of O'Connor respondent No. 2 in the presence of these two witnesses boasted of his having had a good time with the wife and that "she was a remarkable lady". Respondent No. 2 had also love letters purporting to be from the wife, parts of which he read out to these witnesses. They repeated the story to the husband which set him thinking. Shearer J. held this

part of the evidence to be true and the Appeal Court also accepted it but construed it as showing that there was no adulterous connection at that time, i.e., in September or it had ended at the instance of the wife. Even as it is this finding is not destructive of the husband's case as to adultery at Patna in the month of July; on the other hand it supports adulterous relations.

The presence of the mother of respondent No. 2 might have been a shield against the commission of adultery at Patna but the document Ex. 8 which has been accepted by the Courts below to have a substratum of truth just strips it away. This document is indicative of the mother's attitude towards the wife. The following extract from this document is relevant as showing that she wanted the wife for her son :

"How nice it would have been if you had married my son David'. On another occasion while having tea long with her she begged me to leave my husband and go away with her son who was ruining his life and health and could not settle down to a job as he could not bear to see me married to another man."

The presence of the mother would thus be no impediment to adulterous relations between the two. The wife in the witness box wholly denied the episode of the Central Hotel including her stay there, which has deprived the Courts of her explanation. We are, therefore unable to get any assistance from her or as a matter of that from respondent No. 2 as to what happened in the hotel at Patna.

The appellant contends that the only conclusion to be arrived at upon the evidence taken as a whole is that the wife was guilty of adultery with respondent No. 2. In other words the evidence was in quality and quantity such that it satisfies the requirements of s. 14 of the Act which provides :

S. 14 "In case the Court is satisfied on the evidence that the case of the petitioner has been proved.....".

The important words requiring consideration are "satisfied on the evidence". These words imply that the duty of the Court is to pronounce a decree if satisfied that the case for the petitioner has been proved but dismiss the petition if not so satisfied. In s. 4 of the English Act, Matrimonial Causes Act of 1937 the same words occur and it has been there held that the evidence must be clear and satisfactory beyond the mere balance of probabilities and conclusive in the sense that it will satisfy what Sir William Scott described in *Loveden v. Loveden* [(1810) 161 E.R. 648, 649; (1810) 2 Hag. Con. 1, 3], as "the guarded discretion of a reasonable and just man". Lord MacDermott referring to the description of Sir William Scott said in *Preston Jones v. Preston Jones* [[1951] A.C. 391, 417] :

"The jurisdiction in divorce involves the status of the parties and the public interest requires that the marriage bond shall not set aside lightly or without strict enquiry. The terms of the statute recognise this plainly, and I think it would be quite out of keeping with the anxious nature of its provisions to hold that the court might be "satisfied" in respect of a ground for dissolution, with something less than proof beyond reasonable doubt. I should, perhaps, add that I do not base my conclusion as to the appropriate standard proof on any analogy drawn from the criminal law. I do not think it is possible to say, at any rate since the decision of this House in *Mordaunt v. Moncrieffe* [(1874) 30 L.T. 649] that the two jurisdictions are other than distinct. The true reason, as it seem to me, why both accept the same general standard - proof beyond reasonable doubt - lies not in any analogy but in the gravity and public importance of the issue with which each is concerned."

The Act lays down in s. 7 that Courts in all suits and proceedings under the Act shall act and give relief on principles and rules which in the opinion of the Court 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. In our opinion the rule laid down by the House of Lords would provide the principle and rule which Indian Courts should apply to cases governed by the Act and the standard of proof in divorce cases would therefore be such that if the judge is satisfied beyond reasonable doubt as to the commission of the matrimonial offence he would be satisfied within the meaning of s. 14 of the Act. The two jurisdictions, i.e., matrimonial and criminal are distinct jurisdictions but the terms of s. 14 make it plain that when the Court is to be satisfied on the evidence in respect of matrimonial offences the guilty must be proved beyond reasonable doubt and it is on that principle that the Courts in India would act and the reason for adopting this standard of proof is the grave consequence which follows a finding of guilt in matrimonial causes.

Gower v. Gower [[1950] 1 All E.R. 804] was passed before us by counsel for the appellant as to be approach that the court should have to a matrimonial offence. But in view of the decision in Preston Jones Case [[1951] A.C. 391, 417] it is unnecessary to discuss that case.

In a suit based on a matrimonial offence it is not necessary and it is indeed rarely possible to prove the issue by any direct evidence for in very few cases can such proof be obtainable. The question to be decided in the present case therefore, is whether on the evidence which has been led, the court can be satisfied beyond reasonable doubt that adultery was committed by the wife with respondent No. 2 at Patna between July 25, 1950, and July 28, 1950. In our opinion the facts proved are quantitatively and qualitatively sufficient to satisfy the test laid down by the House of Lords in Preston Jones Case [[1951] A.C. 391, 417]. The wife went to Patna and stayed with respondent No. 2 under an assumed name. They occupied the same room, i.e., room No. 10. There was undoubtedly a guilty inclination and passion indicated by the conduct of respondent No. 2 and there is no contrary indication as to the inclination and conduct of the wife. On the other hand her conduct as shown by the evidence is so entirely consistent with her guilt as to justify the conclusion of her having committed adultery with respondent No. 2 and therefore the finding of the Courts below as to the guilt should be reversed.

We would, therefore, allow this appeal, set aside the judgment and decree of the High Court and pass a decree nisi for dissolution of marriage. As adultery has been proved respondent No. 2 shall pay the costs in this Court and in the Courts below.

Appeal allowed.

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