

Sanat Kumar Agarwal

Vs

Nandini Agarwal

Civil Appeal No. 239 of 1990

(K.N. Singh, N.M. Kasliwal JJ)

24.01.1990

JUDGMENT

KASLIWAL, J. -

1. Special leave granted.

2. This case reveals how a pernicious custom known as 'GURAWAT' (Salta-Palta) resulted in matrimonial casualty in respect of two families of Agarwal community. There is a custom prevailing in Agarwal community of Chhatisgarh region in the State of Madhya Pradesh known as 'GURAWAT'. According to this custom brothers and sisters of one family are married to brothers and sisters of another family. The parties in the present case belong to educated families of Agarwal Community of Durg in Chhatisgarh region of Madhya Pradesh. Sanat Kumar Agarwal appellant was married to Smt. Nandini, respondent and Shivnarain elder brother of Nandini was married to Shakuntala, sister of Sanat Kumar on June 11, 1978 at Durg. At the time of marriage Sanat Kumar was employed at Walchand Nagar (Pune). Both the brides went to the respective houses of their in-laws after their marriage. In Chhatisgarh area, the women celebrate the festival of Teez at their parents' house and similarly Shakuntala came back to her parents' house. It appears that there was a dissension between Shivnarain and Shakuntala and on that account she remained at her parents' house and as such Smt. Nandini also remained at her parents' house. Sanat Kumar along with his sister Shakuntala and mother on November 28, 1978 tried to resolve the matrimonial friction between the two families. On December 1, 1978 a talk was held between Sanat Kumar and Shivnarain at the house of the father of Nandini and ultimately on December, 3 1978 Shivnarain took Shakuntala to his house and Sanat Kumar also brought Smt. Nandini to his house after Vida ceremony.

3. Thereafter again some differences arose between Shivnarain and Shakuntala and as such on December 8, 1978 Shakuntala came to her parents house from her in-laws house and on December 9, 1978 Nandini also went to her parents' house from her matrimonial home. Thereafter Nandini as well as Shakuntala continued to live at their parents houses respectively. Both Shivnarain as well as Sanat Kumar filed petitions of divorce against their wives on the ground of cruelty and desertion as contemplated under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act., 1955. The petition for divorce filed by Shivnarain was dismissed by the trial court but was allowed in appeal by the High Court and an appeal filed against the judgment of the High Court was dismissed by this Court on January 16, 1990 in Civil Appeal No. 835 of 1987 Smt. Shakuntala v. Shivnarain Agarwal. Petition for divorce filed by Sanat Kumar against Smt. Nandini was dismissed by the trial court and the order was affirmed by the High Court. Sanat Kumar aggrieved by the judgment of the High Court has filed the present Special Leave Petition No. 2187 of 1988.

4. We have gone through the entire record of the case and have also considered the arguments advanced by learned counsel for the parties and in our view this appeal deserves to be allowed. The present petition for divorce by Sanat Kumar has been brought on grounds of cruelty and desertion on the part of the respondent Smt. Nandini. Additional District Judge after discussing the evidence decided both the questions of cruelty as well as desertion against the petitioner/appellant. The High Court did not discuss the evidence in details but affirmed the findings of the trial court. The husband Sanat Kumar has thus approached this Court by special leave. So far as the point of cruelty is concerned we agree with the finding of the courts below. Now there remains the question of desertion and in our view the courts below committed error in the facts and circumstances of the present case in holding that no desertion was proved in the present case. Section 13(1) and Section 13(1)(i-b) of the Hindu Marriage Act, 1955 provide as under :

"13. (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party has after the solemnization of the marriage, and voluntary sexual intercourse with any person other than his or her spouse; or

Section 13(1)(i-b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition."

5. It is well settled that the question of desertion is a matter of inference to be drawn from the facts and circumstances of each case and those facts have to be viewed as to the purpose which is revealed by those facts or by conduct and expression of intention, both anterior and subsequent to the actual act of separation. The case of the petitioner Sanat Kumar with regard to desertion was that he was married to Smt. Nandini on June 11, 1978 and on the same day his sister Shakuntala was married to Shivnarain, brother of Nandini. Thereafter some differences had arisen between the parties with the result that Nandini returned back to her parents' house and the appellant's sister Shakuntala also left her husband's house and came to her parents house. On November 28, 1978 the appellant along with his sister Shakuntala and his mother came to meet Shivnarain and then another meeting took place on December 1, 1978 and the parties came to a settlement. Following the settlement, the appellant Sanat Kumar took Nandini to his house while Shivnarain took Shakuntala to his house after performing Vida ceremony. It has been alleged by the appellant that on December 8, 1978 Shakuntala reached her parents' house from her in-laws house and on December 9, 1978. Nandini also went to her parents house after leaving her matrimonial house. It has been alleged that the appellant is a highly educated person belonging to a cultured family. He is posted as a Science Officer in the Nuclear Power Department. The respondent, Nandini is also M.Sc., B.Ed and is employed as a teacher. According to the appellant duration of matrimonial relations between the parties continued only for six months. During this short period they had to face tremendous ups and downs in their matrimonial relationship, in which the solemnization of marriage between the parties according to 'GURAWAT' system had played an important role. On December 9, 1978 Nandini went to her parents house herself and since then she has been residing with her parents. Despite the appellant having forbidden her she passed B.Ed. and joined service as a teacher against the wishes of the appellant. Nandini left the matrimonial house on December 9, 1978 without any cause or reason and thereafter did not resume her matrimonial house and this amounted to desertion. The present petition for divorce was filed on February 6, 1982. It may be mentioned that Shivnarain had filed the petition for divorce against Shakuntala, sister of the appellant on January 1, 1982. Learned Ist Additional District Judge, while dealing with issue No. 2 regarding desertion though believed the statement of the appellant yet decided the question of desertion against the appellant by making

following observations :

"Even if, this statement is accepted to be correct, it does not reveal that the respondent had decided to put an end to marital relationship and co-habitation and had gone from the matrimonial house to her parents house. On the contrary, the respondent has stated that she was always ready and willing to reside with the petitioner".

6. The above approach of the learned Additional District Judge is not correct. If the statement of the appellant is taken to be correct as mentioned by the Additional District Judge then it clearly revealed that the respondent was adamant not to live with the appellant at Walchand Nagar, and she was not even willing to listen to the advice of the parents and other family members of the appellant. Another important circumstance to be noted is that the appellant had written a letter dated June 22, 1979, Ex. PD-6 to the respondent. A perusal of this letter shows that when the appellant had gone to the railway station at Durg, for leaving for Bhopal in 1979, respondent had come to meet him at the railway station. The explanation of the respondent in this regard is that she could not meet the appellant at the station at Durg, for leaving for Bhopal in 1979, respondent had come to meet him at the railway station. The explanation of the respondent in this regard is that she could not meet the appellant at the station because his parents and other family relations had surrounded him and she was apprehending that she could have been insulted in the presence of so many persons. It may be important to note that in the aforesaid letter the appellant had invited the respondent to come to Bhopal along with her brother Shivnarain. Again the explanation of the respondent is that Shivnarain was not willing to go with her to Bhopal because Shiv Narain was apprehending that if he went with her to Bhopal, appellant would force upon Shivnarain to take back the appellants sister Shakuntala, for which Shivnarain was not at all willing. In our view the above stand taken by the respondent and her explanation is totally untenable. It is beyond comprehension that though Nandini would have gone to meet the appellant at railway station, Durg, while he was leaving for Bhopal on transfer she would not have met her husband merely on an apprehension that she could have been insulted in the presence of many persons. That apart, admittedly the appellant had sent a letter as early as on June 22, 1979 inviting the respondent to come to Bhopal along with her brother Shivnarain but even then no effort was made on the part of Nandini to persuade her brother Shivnarain to accompany her and in any case according to her Shivnarain was not willing to go with her, nothing prevented her to go alone as she was admittedly a post-graduate and this conduct on her part clearly goes to show that she never wanted to fulfill her marital obligations and wanted an end of such relations.

7. It is further important to note that the petition for divorce was filed on February 6, 1982 i.e. more than three years leaving the matrimonial home by the respondent w.e.f. December 9, 1978. There is not an iota of evidence placed on record by the respondent nor any averment to show that any effort was made by her to go and join the matrimonial home with the appellant at Bhopal. Now it is more than ten years that the parties are living separately. Admittedly the respondent after passing B.Ed. examination has joined an employment as a school teacher and has an independent income and both the parties have now adjusted to their new mode of life for more than a decade. Admittedly they have no issue and during the course of arguments learned counsel for the respondent also frankly conceded that in case this Hon'ble Court granted a decree of divorce it would be in consonance with justice. We are also alive to the situation that the root cause of the dissensions between the matrimonial relations in between the two families was on account of the custom of 'GURAWAT' and a decree of divorce has already been passed in favour of Shivnarain against Smt. Shakuntala who is the sister of the appellant, Sanat Kumar. In spite of best efforts made by the lower courts as well as

by this Court, reunion between the parties could not be possible. Thus taking in view the peculiar facts and circumstances of this case we are clearly of the view that the appellant has proved his case for the grant of decree of divorce on the ground of desertion.

8. In the result this appeal is allowed, the judgment of the High Court as well as the Additional District Judge, Durg are set aside and a decree for divorce is granted in favour of the appellant and against the respondent. In the facts and circumstances of the case the parties shall bear their own costs throughout.

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