

Punjab-Haryana High Court

Rama Kanta vs Mohinder Laxmidas Bhandula on 7 February, 1995

Equivalent citations: AIR 1996 P H 98

Bench: . S Saksena

JUDGMENT

1. The appellant wife has assailed the judgment and decree dated 5-10-1991 passed in H. M. Case No. 67 of 1988.
2. Uncontroverted facts of the case are that the appellant was married to the respondent on 6-5-1987 at Akola. The respondent is a resident of Akola, while the appellant was residing at Ludhiana along with her family members. In this wedlock she gave birth to a son on 28-2-1988. Since 8-6-1988 they are living separately. The respondent served a notice Exhibit P. 43 on her to which she replied.
3. The factual matrix of the case is that the respondent filed a divorce petition against the appellant on 6-6-1988 at Akola for annulment of marriage on the ground of fraud and in the alternative for a decree for divorce on the ground of cruelty. In a nut shell the petitioner's case was that before his marriage, the appellant's brother Harish Kundan Lal Hora came to Akola to settle the marriage. After initial talks the respondent and his family members were invited to come to Ludhiana to approve the appellant. Thereafter in November, 1986 the respondent and his elder brother came to Ludhiana. They approved the appellant. It was agreed that the marriage will be performed at Akola and at that very time Roka ceremony was performed. In February 1987 engagement was done. Finally on 6-5-1987 they were tied together in the marital tie. On the first nuptial night, he found some scar on her abdomen. On being enquired, he was told by the appellant that many years ago she was operated for appendis. When she was in the family way, he took her to Dr. Asha (P W 5) who also finding the same scar on her abdomen enquired about it. The appellant declined to give any answer. Dr. Asha made queries through the respondent from the appellant's brothers and sisters. Letters were exchanged, telegrams were sent, but they were only infomed that she was operated for faborid tumour.
4. In the matrimonial home the appellant's behaviour was not cordial, She insisted that he should live seperately with her. Thus he was compelled to take another apartment on rent for their living. Even thereafter she insisted that he should have no relation with his parents brothers and sisters. She always quarrelled and insulted the respondent and his family members. She refused to do any household work. When the respondent insisted to disclose the reason of scar on her abdomen, she threatened him to commit suicide in case he persisted in asking her about that scar. On many occasions, she threatened to commit suicide. Later on the respondent came to know through Ashok Kumar (PW 9) and Shri Mohan Lal Jhanji, Advocate (Court witness No. 1) that earlier the appellant was married to Ashok Kumar Kalra. She gave birth to a son from his loins and at that time she had undergone a caesarean operation. After obtaining divorce from Ashok Kumar she was married to Kurum Jhanji, but he obtained divorce against her. These facts were not disclosed to him before the settlement of marriage or even thereafter. Thus these material facts were concealed deliberately. Had he known these facts he would not have consented for marriage. Thus a fraud was committed to obtain his consent. On these facts on the ground of fraud, he prayed for annulment of marriage and on the ground of cruelty for a decree of divorce.
5. The appellant in her reply denied that before marriage she had undergone a caesarean operation. According to her, all the facts of her past life were disclosed to the respondent before marriage. When he came to Delhi to meet her, she again disclosed all those facts to him. Thus it is denied that incidents of her past life were concealed. It is also denied that her behaviour was cruel towards the respondent and his family members. No doubt they started living in a separate room, but it was not because of her insistence. The respondent was not happy with the dowry given at the time of marriage. He wanted her brother to purchase a house for him. He maltreated her even after her delivery in the hospital, thereby she had to undergo another minor operation. Thus she denied both the counts on which the petition was filed.

6. The petition was filed at Akola. The appellant filed a petition along with her affidavit in the Supreme Court and prayed that since she is residing at Ludhiana, the case be transferred to that place. Her petition was allowed by their Lordships of the Supreme Court. Hence the case came to the trial Court.

7. Parties adduced evidence in Support of their pleadings. Scanning the evidence minutely, the trial Court came to the conclusion that before marriage those facts that the appellant was married twice earlier and was divorced and she gave birth to a son and had undergone a caesarean operation were not disclosed to the respondent before marriage and thus his consent to marriage was obtained by practising a fraud. On this count, the decree for annulment was granted. Trial Court further held that the respondent has proved that the appellant treated him with cruelty and on this count also in the alternative decree for dissolution of marriage was granted.

8. The appellant's learned Counsel stressed vehemently that before marriage respondent was informed by appellant's brother as well as by Mukand Kulkarni and by the appellant herself that the appellant was earlier married to Ashok Kumar Kalra. In that wedlock she gave birth to a son and had undergone a caesarean operation. After obtaining divorce from him she was married to Kusum Jhanji who also divorced her. The respondent belongs to a middle class family He, his brothers and sisters are Teachers in educational institution. The respondent agreed to marry the appellant because she belongs to very rich family of Ludhiana. Her brothers own Cinema Houses and other landed properties. It was agreed that her brother will purchase a house for the respondent at Akola which he did purchase for him. The appellant is a beautiful and double Graduate woman. The respondent had no objection in marrying a divorcee as is evident from the advertisement given for his marriage in the Tribune by Mukand Kulkarni (PW 2) who was a mediator for the settlement of this marriage because he is an employee of Chand Theatre owned by appellant's brothers and his brother is respondent's neighbour at Akola. Even in the advertisement Ex. RW-2/1 it was made clear that he is willing to marry a divorcee. This advertisement was given for publication by Mukand Kulkarni (RW 2) at the behest of the respondent. Hence he argued that the respondent falsely made an accusation that the incidents of appellant's past life were not disclosed and his consent was obtained under a fraud. According to the petitioner-respondent Shri Mohan Lal Jhanji, Advocate, told him that earlier appellant was married to Ashok Kumar Kalra and in that wedlock she gave birth to a son, but Mohan Lal Jhanji has denied this fact.

9. The appellant's learned Counsel also contended that the respondent has utterly failed to prove the ground of cruelty. She was subjected to cruelty and beating by the respondent. He also made it clear that the affidavit filed in the Supreme Court along-with the transfer petition bears her signatures, but she signed on blank papers without knowing their contents.

10. The respondent's learned Counsel supported the judgment and pointed out that Mukand Kulkarni being appellant's brother's servant for the last 10 years has falsely stated that on the respondent's request he got advertisement published in the Tribune about his marriage. According to him, it is proved on record that the matrimonial negotiations were going on between the parties from November 1986. In December, 1986 when the respondent and his brother came to Ludhiana and approved the appellant, at that time Roka ceremony was performed. Thereafter in January, 1987 there was no question of giving matrimonial advertisement. Further even Mukand Kulkarni has admitted that the respondent is Khatri by caste. His biodata is at Ex. R-1 wherein his age is shown as 29-21 years because there is over-writing on it and his height is given as 5'-8" but in the said advertisement the caste of boy is mentioned as Arora, height 5'-6" and age 37 years. On this count, it is also evident that the alleged advertisement does not refer to the respondent.

11. The respondent's learned Counsel further pointed out that if it would have been a fact that before marriage the respondent was informed that earlier appellant was married to Ashok Kumar Kalra, she gave birth to a son in this wedlock by undergoing a caesarean operation, after divorcing him she was married to Kusum Jhanji who also divorced her, then there was no reason for the appellant not to disclose correctly when being asked by him as well as by Dr. Asha about the scar on her abdomen. In those circumstances she would have told him and to the Doctor clearly that it is a scar of caesarean operation, but from the queries made by the Doctor

Asha, (letters written by appellant's sister and brothers, telegram given which all are on record) it is evident that a positive deliberate attempt was made by the appellant as well as by her siblings not to disclose that she had undergone a caesarean operation.

12. He further took me to the evidence on record and argued that the respondent has duly proved that the appellant treated him with cruelty. Her behaviour in the matrimonial home was not cordial and respectful. She abused and insulted her husband and his family members. She insisted that he should live away from them. He acceded to her demand and started living in a separate room. She again persisted in her demand that he should break all his ties with his family members. Whenever they used to come to her she insulted them. She declined to do any household work and whenever the respondent asked her about the said scar on her abdomen, she was so irritated that on 3/4 occasions on this count she tried to commit suicide. He also pointed out that she lodged a false report against the respondent and his family members and in that case the respondent's father was arrested. Her this behaviour also amounts to cruelty, thereby she has made his life miserable. According to him, the trial Court has rightly granted decree of divorce on the ground of cruelty.

13. I find that the trial Court has rightly weighed the parties' evidence on record and has arrived at correct conclusions. The findings of the trial Court do not call for any interference. Even in her affidavit filed in the Supreme Court as well as in the reply to the respondent's petition (unamended) she never admitted that she had undergone a caesarean operation or she was earlier married to Ashok Kumar Kalra and Kusum Jhanji or these facts were disclosed to the respondent before the settlement of marriage. After getting positive information about her previous marriage with Ashok Kumar Kalra and Kusum Jhanji and the fact of her undergoing a caesarean operation, he amended his petition accordingly and thereafter in reply, she admitted all these facts. From the letters on record it is evident that there was a positive deliberate attempt made by appellant's brothers and sisters to conceal the fact of her undergoing a caesarean operation. If before marriage the respondent would have been informed about her previous marriages with Ashok Kumar Kalra and Kusum Jhanji and her giving birth to a son from the loins of Ashok Kumar Kalra, there was no necessity of hiding that fact of caesarean operation. The respondent as PW I has clearly stated that when his marriage with the appellant was settled he was not informed of these facts. If he would have known these facts he would not have consented to marry her. He is duly corroborated by his brother Sataya Pal (PW 8), Mukand Kulkarni (RW 2) is servant of appellant's brother in the Cinema House for the last 10 years. The appellant as RW 1, Mukand Kulkarni (RW 2) and Harish Chander (RW 3) have testified that when the negotiations about the marriage of the parties were going on, the respondent and his brother were told about the past life of the appellant. The respondent agreed to marry a divorcee and hence the marriage was settled. These witnesses have named certain independent persons who were present when the alleged disclosure was made, but the appellant has failed to examine those witnesses. Harish Chander (RW 3) is her brother and Mukand Kulkarni is paid employee of her family. Hence they are bound to corroborate her.

14. Witnesses may tell lies, but circumstances never tell lie. As mentioned above, the appellant and her brothers and sisters made a persistent positive attempt to hide the fact that the appellant had undergone a caesarean operation. So many documents are on record to prove this query and their evasive replies. This circumstance by itself proves that before marriage the respondent was not informed that the appellant was married twice earlier and she gave birth to a son in the first wedlock by undergoing a caesarean operation. The alleged matrimonial advertisement, as is pointed out above, does not relate to the respondent. The appellant has admitted on oath that she was married to Ashok Kumar Kalra, she gave birth to a son by undergoing a caesarean operation. Then they executed an agreement and got mutually divorced. Thereafter she was married to Kusum Jhanji who also obtained a decree of divorce against her. Thus I find that the trial Court has rightly held that these facts were not disclosed to the respondent before marriage and thus a fraud was practised on him. On this count, under Section 12 of the Hindu Marriage Act, 1955 the marriage of the parties was rightly annulled.

15. So far as the ground of cruelty is concerned, from the statements of the respondent, his father Laxmi Dass (PW 6) and his brother Satya Pal (PW 8) it is evident that after marriage the appellant's behaviour in the

matrimonial home was not cordial. She never cared to do household chores. She was disrespectful towards her in-laws. On her insistence, the respondent took a separate residence. She again insisted that he should sever all ties from his family members. The respondent has also proved that when she was asked to disclose the cause of scar on her abdomen, she became so much annoyed that she threatened to commit suicide. Such attempts were made by her on 2/3 occasions. On this point, he is duly corroborated by Siri Krishan (PW 2), Krishan (PW 3) and Babu Rao (PW 4). It is also proved on record that earlier she lodged a complaint against her former husband Ashok Kumar Kalra under Sections 307, 498A, IPC and again she lodged a false report against the respondent and his family members. The respondent's father Laxmi Dass (PW 6) was arrested and other persons obtained anticipatory bail orders from the Court. After full trial, all these persons were acquitted.

16. Cruelty implies and means harsh conduct of such intensity and persistence which would make it impossible for the spouse to operate the marriage. Cruelty is not defined in the Act. It is to be determined on the basis of proved facts and circumstances of the case. No fixed formula can be had for cruelty. It is to be determined keeping in view the culture, temperament and status in life of the parties and many other factors. In a case of similar facts in Gurdip Kaur v. Balbir Singh, 1990 (2) HLR 109 it is held that the wife is guilty of cruelty and on this count, decree of divorce was granted.

17. In the case in hand, her above conduct in the matrimonial home, her threats and attempts to commit suicide, her act of lodging false complaint against her husband and his relations under Section 498A/ 34, IPC (which ended in acquittal) are incidents of cruel behaviour towards the respondent. Her this conduct made it impossible for the respondent to live peacefully with her in the conjugal home. Thus according to me, the trial Court has not fallen into error in holding her guilty of the offence of cruelty and on this ground granting a decree of divorce in favour of the respondent in the alternative. No other point is pressed before me.

18. Consequently finding no reason to interfere with the trial Court's findings, the appeal is hereby dismissed with costs.

19. Appeal dismissed.