

(1995) 07 MP CK 0025
Madhya Pradesh High Court
Case No: F.A. No. 34 of 1993

Usha Gupta

APPELLANT

Vs

Santosh Kumar
Pahadiya

RESPONDENT

Date of Decision: July 3, 1995

Acts Referred:

- Hindu Marriage Act, 1955 - Section 13(1)

Citation: (1996) 1 DMC 90 : (1996) ILR (MP) 381 : (1996) 41 MPLJ 42 : (1996) MPLJ 42

Hon'ble Judges: T.S. Doabia, J

Bench: Single Bench

Advocate: H.D. Gupta, for the Appellant; R.D. Jain, for the Respondent

Final Decision: Allowed

Judgement

T.S. Doabia, J.

A marriage which was solemnised in the year 1982 is sought to be dissolved by a decree of divorce. The ground on which this application is founded is that the present appellant has been of incurably unsound mind and has been suffering continuously from mental disorder of such a kind that the respondent husband cannot live with the appellant. Even though, out of this wedlock two children were born, the plea has been taken that the appellant was suffering from mental disorders from the very first day of the married life. A decree of divorce has in fact been passed by the Seventh Additional Judge to the Court of District Judge, Gwalior. It is against this decree, the present appeal has been preferred. The brief facts are as under :

As per the Hindu customs and traditions a marriage- which is subject of this appeal - was solemnised on 16.2.1982. The parties lived together for about five years. Out of the wedlock two children were born. The elder one is daughter. She was born on 12.4.1984. The younger one is a son. He was born on 11th June, 1985. The appellant had passed

B.A. Part-I examination at the time when she was called upon to perform of matrimonial obligations.

The petition seeking divorce is based on the ground enumerated in Section 13(1)(iii). According to the respondent/husband, the wife has been suffering from such mental disorders which are not curable in nature. It is stated that the behaviour of the appellant was not normal from the very first day. It is alleged that once the appellant starting speaking then she would keep on speaking. During this period she would also start shrieking, dancing and even singing songs. In the petition it was stated that the normal sense of respect was not a matter of concern for her. It is stated that the appellant-wife stayed with the respondent- husband for some time and went thereafter to her parental house in March, 1982. On account of her abnormal behaviour she was taken for treatment at Gwalior. She was treated at the clinic of one Dr. Kale. It is stated that this treatment led to no improvement. Another Dr. Smt. Malhotra also treated the appellant. There was again no improvement. Electric shocks were also administered to her. It is stated that inspite of all this, there was no improvement in the mental condition of the appellant. On the other hand there was further deterioration. It is elaborated in the petition that the appellant would not stay inside the house. She would run towards the road. Household goods were scattered by her. She would break her bangles and even remove her Sindoor (Vermilion). In the application there is a suggestion that there was some improvement on account of the treatment and she was taken to her parental house. She came to live with the respondent-husband again in the year 1984 but her mental condition was no better. She would either keep quiet for hours or keep on speaking of her own. This she did even when she was alone. It is in August, 1985 the respondent-husband formed a belief that the state of affairs is such which could not be improved upon. According to the husband, the appellant would call him "Kalua" and "Joker". She continued with her behaviour of running out of the house. It is stated that once she entered the toilet and was seen washing her face with flush water. It is also stated that on another occasion the appellant caught hold of her son and wanted to throw him from the first floor. She was prevented from doing so. Another incident which is being mentioned is that in the year 1985 on the occasion of Janamashtami the Prasad meant for offering to the deity was taken by her before it could be offered to the gathering. This she did as she thought that supernatural power stands bestowed on her. She was again under treatment. Electric shock were also administered to her. It is stated that in the year 1986 the father of the appellant took her to his house for treatment. There was no improvement. The appellant came to the house of the respondent at Dabra in 1987. She climbed over the roof and made an attempt to jump from the roof. She was taken for treatment at Gwalior and thereafter she went to her parental house alongwith the children. It is on the basis of the above facts, as noticed above, a petition was preferred u/s 13(1)(iii) of the Hindu Marriage Act, 1985 (hereafter referred to as the "Act"). It is stated that the appellant is not upholding the traditions, which she is supposed to uphold as a married woman. Her conduct is not normal. An apprehension has been expressed that there is every possibility that she may either injure herself or may cause bodily injury

to the person of the respondent or her children. It was, accordingly, pleaded that the husband should be granted a decree and the marriage be dissolved.

The case of the appellant-wife be noticed. According to her, various assertions made in the petition, are without any foundation. It is stated that they lived together in a cordial manner. The fact that two children were born out of the wedlock has been highlighted. The appellant states that she has not been remiss in the matter of performing matrimonial duties. According to her when she went for the first time to her husband house, a very unusual incident took place. Some gold ornaments belonging to some ladies of her husband's family were lost. As a result of which, a search was conducted. Even the belongings and the baggage containing items of the appellant were not spared. She was also accused by the family members. It was suggested that she has brought bad luck to the family. This according to the appellant did disturb her because such an insinuation on the very first day of the married life would upset any normal person. According to her she never expected this treatment on the very first day. According to her, she suffered a shock but has recovered and has been performing matrimonial duties. She has highlighted that she has passed B. A. Final as a private candidate after marriage. She has been looking after her children and they have been given proper education. As noticed above a daughter was born in April, 1984 and the younger child-a son was born in 1985. These two children are with the appellant. She states that there is some improvement in financial status of the husband and he wants to marry second time. The petition for divorce accords to her is ill-founded and the Court below has not properly appreciated the factual position.

Before noticing the evidence which has been brought on the record, it would be apt to notice the relevant statutory provisions. As noticed above, a petition with a view to dissolve the marriage has been preferred u/s 13(1)(iii) of the Act. This provision reads as under :

13. Divorce.-(1) Any marriage solemnised, 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.

xxx xxx xxx xxx xxx xxx

(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation- In this Clause,-

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment, or.

It is for the person seeking divorce to establish that the other side has been incurably of unsound mind. Mental disorder cannot be established merely on the oral testimony of the applicant or his relations. Their statement made in Court merely provide symptoms but as to whether those symptoms amount to mental disorder or not has to be ultimately based on expert opinion. It is apt to notice that there is no single test for determining as to whether a person is suffering from mental disorder. It is the total clinical picture and history of development of symptom which has to be studied.

Taylor's Principles and Practice of Medical Jurisprudence deal with essential elements of mental illness in following terms :

"Perhaps the essential feature of mental illness from a medico legal point of view is the failure through incapacity of the individual to maintain normal contact with external reality, and to appreciate the distinction between what is going on solely in his own mind and what is going on beyond it in the external world, and is therefore common to this own experience and that of other. The older term alienation of the mind" despite its disagreeable implication that mentally ill patients were a race apart, certainly owed something of its force to just this characteristic of mental illness in general: that the mentally ill person is separated from common experience and appreciation of external reality, and to a greater or lesser degree, is compelled by his illness to live in a world different from that inhabited by his fellow men.

Mental health is assumed to be normal: mental illness to be abnormal; but there is no definite dividing line between one and the other; and one may pass imperceptibly into the other in the development of the illness which ultimately disables the patient and thereby nullifies or modifies individual legal responsibility or capacity.

Taking the failure of contact and appreciation of reality as the basic criterion, it is obvious that the term insanity as ordinarily used must denote a fairly advanced degree of disturbance or unsoundness of the mind. Since it is by means normal mental activity that an individual is able to adapt himself to his environment, and to adjust himself to relationships with his fellowmen, disorder or disease of the mind is apt to display itself primarily in disturbance of thought and conduct, which may bring the individual into conflict with his environment or with his fellows."

The passage in Stroud's Judicial Dictionary at page 2141 clearly bring out this distinction in the following term :

" "Unsound mind" which all persons must understand to be a Depravity of Reason or want of it. Mere eccentricity is not such an unsoundness of mind as will amount to

testamentary incapacity. There is an important difference between Unsoundness of Mind and Dullness of Intellect".... Unsoundness of mind may arise from perversion of the mental powers, and may exhibit itself by means of delusions or strong antipathies, which is called "Mania"; or it may arise from what may be termed as defect of mind as where the mind was originally incapable of directing itself to anything requiring judgment which is "idiocy" or where a mind originally strong, has become weakened by illness or age though producing no such insanity as to amount to Mania."

The mental illness is defined in Black's Medical Dictionary, 28th Edition, at page 574 thus:

"Mental illness arises from a disease or disordered working of that part of the nervous system which determines mind and conduct. So long as individual peculiarities occasioned by mental disorder do not result in conduct or behaviour which is markedly opposed to prevailing social custom, society does not interfere with the person. When the person's conduct becomes so far divergent from social usages that he becomes legally certifiable, he can be sent compulsorily to mental hospital. It must be remembered that, however, that there are all grades of mental disorder from slight peculiarities or temporary delirium upwards."

In Dr. Sir Hari Singh Gour's Penal Law of India, Note-19 u/s 4, the learned author described types of mental illness thus :

"19. Types of mental illness. Psychiatric clinical entities areas discreet as other disorder. Mental illness may be classified in various ways. The following list is not intended to be schematic, but merely tabulates the most commonly recognised forms of disorder :

A. The psychosis-

(1) Manio-depressive

(2) Schizophrenia.

B. xxx xxx xxx xxx

C. xxx xxx xxx xxx

D. xxx xxx xxx xxx

E. xxx xxx xxx xxx

At page 635, the learned author deals with Schizophrenia as follows :

"Schizophrenia-The terms schizophrenia, indicating a splitting of the mind, today has largely replaced the older terms "dementia praecox." The concept embraces sufficiently diverse clinical entities so that it might be better to refer to the schizophrenias or the schizophrenic-reaction types. They have in common the bizarre though content and odd behaviour of the patient, his seeming detachment from the world of reality, the presence

of delusions (false belief), illusions (false interpretations of stimuli), and hallucination (perception of non-existent external stimuli). The patient also lacks awareness and understanding of his illness and is disorganised in his social relationship to others.

The cause of schizophrenia are not known. Perhaps Adolf Meyer's view is as sound as any that the schizophrenic process is the progressive mal- adaptation of the individual to his environment. There is also evidence that the disorder has its source in the early years of infancy, perhaps in a lack of warm and genuine mother love."

Harrison's "Principles of Internal Medicine", Vol. 2 Schizophrenic disorders and diagnosis of Schizophrenic disorders have been dealt with the malady at page 2128. This reads thus :-

"Schizophrenic Disorders-

Schizophrenic disorders are serious mental illnesses that have a duration of 6 months or more and cause significant socio, vocational and personal disability and suffering. The schizophrenic patient often appears to be bizarre, inappropriate and mentally impaired. Despite its stereotypic presentation, perhaps no other psychiatric disorder has proved as vexing and difficult to define, identify and treat.

Schizophrenia has a lifetime prevalence rate of about 1 percent across all cultures. In the United States alone there are perhaps 2 million affected individuals who often become ill in their late teenage years and in the third decade of life. Poor outcome frequently leads to extensive and long term disability, and schizophrenia accounts for a staggering estimated 20 billion per year of lost productivity in 1975 dollars. Most patient with Schizophrenic disorders also cause major perturbations for family and social support systems, adding to the economic losses and the toll of human misery, cumulatively, these factors make schizophrenia one of the most costly and vexing health problems.

Table 368-4 Diagnosis of schizophrenic disorders.

A. Presence of characteristic psychotic symptoms in active phase, either 1, 2 or 3 for at least 1 week (unless symptoms are successfully treated):

1. Two of the following :

Delusions

Prominent hallucinations

Incoherence or marked loosening of associations

Catatonic-behaviour

Flat or grossly inappropriate affect

Bizarre delusions

Prominent hallucinations of a voice with content having no apparent relation to depression or elation, or a voice keeping up a running commentary on the person's behaviour or thought, or two or more voices conversing with each other.

B. During the course of disturbance, functioning in areas such, as work, social relations, and self-care markedly below highest level achieved before on set of disturbance.

C. Schizoaffective disorder and mood disorder with psychotic features have been ruled out.

D. Continuous signs of disturbance for at least 6 months. This period must include an active phase (of at least 1 week, or less if symptoms have been successfully treated) during which there were psychotic symptoms characteristic of schizophrenia (See A above), with or without a prodromal or residual phase.

E. It cannot be established that an organic factor initiated and maintained the disturbance.

F. If a history of autistic disorder exists, the additional diagnosis of schizophrenia can be made only if prominent delusions or hallucinations are also present."

The expression "incurably of unsound mind" as used in Matrimonial Causes Act, 1950 was considered in *Whysall v. Whysall*, (1959) 3 All E.R. 389.

It was observed :

"In deciding whether a person is "incurably of unsound mind" the test to be applied is whether by reason of his mental condition he is capable of managing himself and his affairs and, if not act whether he can hope to be restored to a state in which he will be able to do so. I would add to the above test the rider that the capacity to be required is that of a reasonable person."

It was further observed :

"In my judgment, the test to be applied to the word "incurable" is to be applied with common sense and with regard to the popular understanding of the term. In a sense, no doubt anyone who has suffered a severe disease, mental or physical cannot be cured in that he cannot expect to enjoy a mind or body as robust or healthy as before.

Nevertheless, we regard such a person as cured when he has left hospital and resume a normal life. The mere fact that he may have to take prophylactic measures to preserve his cure does in ordinary language class him as an invalid. In the physical sphere injections in the case of a diabetic provide a parallel to the Largactil which the schizophrenic must always take even after he is discharged as clinically "recovered". There will always be borderline cases, such as cases where there is a real prospect of relapse at an early

date, but if these cases are to be properly assessed and the interests of the mentally afflicted are to be protected, a practical test must be found a test which enables a doctor to say with some confidence on which side of the line the particular patient falls. If a man can hope to resume a normal married life and to manage himself and his affairs, no ordinary persons would describe him as incurably of unsound mind or insane because he has to take a drug once a week or once a day. Equally, however, if in the light of medical knowledge at the time of the inquiry it is said that the patient's mental state is such that the best can be hoped for is discharge to conditions himself or his affairs but will live an artificial existence protected from the normal incidents and problems of life he will properly be termed incurable. A parallel in the physical sphere is the patient who can go home but will always be bedridden, whom we would term a permanent invalid."

The case of *Bennett v. Bennett* (1969 1 A11E.R. 539) shows that the parties were married in 1965, but were together for only short periods. Before the marriage she was admitted to a mental hospital on two occasions, she received shock treatment and was subsequently discharged. The husband was not aware of those facts. In November, 1965, the husband returned home and came to know of the same. Then he went abroad and returned in 1966. He did not see the wife. But he immediately consulted a Solicitor and filed a petition for a decree of nullity u/s 9 of the Matrimonial Causes Act, 1965. It was held that there was no evidence that the wife had suffered from recurrent attacks of insanity within the meaning of Section 9(1)(b)(iii) of the above statute, insanity being interpreted to mean the same as unsoundness of mind in Section 9(1)(b)(i). It was further held that although the wife had been temporarily insane and of unsound mind for a short period in 1955, she suffered from a temporary hysterical neurosis, within the definition of mental disorder as the term is used in Section 4 of Mental Health Act, 1959, there was no evidence that she was suffering from a mental disorder of such kind or to such an extent as to be unfitted for marriage and the procreation of children, within the meaning of Section 9(1)(b)(ii) of the section. The husband's petition was dismissed.

In the light of expert exposition of mental disorders and judicial pronouncement, the evidence in the present case be seen :

The Respondent husband examined P.W. 2, Dr. Banmala Agarwal. P.W. 4 Dr. (Smt.) S.K. Malhotra, P.W. 6 Dr. D.P. Kataria, P.W. 9 Dr. Ajay Shankar, P.W. 10 Compounder Vinod Gupta who was working with Dr. Kale.

Apart from the medical evidence, the husband has produced his own sister P.W. 3 Sheela Gupta, P.W. 5 Ram Swaroop, P.W. 7 Sitaram Sahu (Neighbour) & P.W. 8 Ramdas Pahadia also neighbour. He also appeared as a witness.

The appellant appeared as a witness. She also produced Dr. V.K. Jain (D.W. 1), Dr. Vinod Saxena (D.W. 2) & Dr. R.N. Sahu (D.W. 5), D.W. 6 Dwarkadas who is a neighbour, D.W. 7 Lachhiram Gupta, father of the appellant has also put in appearance.

The husband appeared as a witness. He has repeated whatever was stated by him in the application. He has referred to the factum of marriage and as stated that the appellant was suffering from mental dis-order from the very beginning. P.W. 2 Dr. Vanmala Agarwal has stated that she examined the appellant and it was found that she was suffering from "Acute Manic Psychosis". Her report is Ex. P-7. According to her two persons would be required to look after the appellant as when she got out of control. According to her, her husband would have to look after her all the time. Certain medicines were prescribed. She was unable to say as to what was the condition of the appellant at the time she appeared as a witness. Whatever she stated was with regard to the period of 1983. According to her as noticed above, at that time she was suffering from "Acute Manic Psychosis".

Dr. Smt. S.K. Malhotra appeared as P.W. 4. Her report is Ex. P-3. She opined that the appellant was under her treatment. According to her, her relatives informed that she used to speak a lot and that she was under belief that she was possessed of super-natural power bestowed on her by Lord Hanuman. She was, however, not sure and was unable to point out that it was the appellant who was examined by her. In cross examination she stated that the medical science has made some progress and mental disorders can be cured by appropriate medicines and a person can become normal by the use of prescribed medicines. According to her, there is a possibility of occurrence of mental tension when a person enters married life. According to her electric shocks are also given by way of treatment. She was categorical that if some further opinion is to be given then the appellant would have to be examined for a period of 10 days. She did not say that the appellant was so examined for 10 days earlier.

Dr. D.P. Kataria (P.W. 6) is practising in Dabra since 1981 as a Private Doctor. According to him the appellant was brought to him and she was given injection of Largactil. He advised that the appellant be shown to some expert. According to him such a person may require life long treatment. According to him an "Electro Seplo Therapy" is given only when a patient is not in a co-operating mood.

Dr. Ajay Shankar has appeared as P.W. 9. According to her, the patient whose name is given as Ex. P-5 was given some treatment. He was unable to identify the appellant.

From the discussion above i.e., the evidence which has been brought on the record by both the parties and also the opinion of the experts of medical jurisprudence, it becomes apparent that with a view to bring a case within the four corners of Section 13(1)(iii) of the Act, it is to be established that the other side is of incurably unsound mind and is suffering from mental disorders which have completely arrested the development of the mind. Thus, the following elements or symptoms are required to be present.

(i) failure to maintain social contact with external relations;

- (ii) failure to have a distinction between what is going on in the mind of the patient and what is going on in the external world;
- (iii) there should be deprivity of reason;
- (iv) disordered working of the nervous system; and
- (v) there should be disorder in social relations.

The evidence which has been brought on the record first of all does not establish as to what was the condition of the appellant at the time when she was examined by various doctors. The doctors have only said something regarding the condition which the appellant displayed in the initial years of marriage. On the other hand, it has come on the record that the appellant has improved her educational qualifications and has been looking after her children. Thus, the apprehension of the respondent that there is danger to his life or to his children is not borne out. As a matter of fact, the minor son of the parties was present in the Court and he displayed no symptom which could display that he in any way suffered from any fear from the appellant.

Where a person was found to understand a writing and who can write and draft a letter it was assumed that he cannot be attributed the malady to which the respondent suggest her to be suffering from. See the decision given by the Allahabad High Court in a case reported as [Mt. Titli Vs. Alfred Robert Jones](#) , where a person fully understands the nature and consequences of the marriage then the plea of insanity or mental disorder or mental infirmity cannot be sustained.

In the present case, as noticed above, two children were born out of the wedlock. The appellant is looking after the children to the best of her ability. The possibility that allegations were made against her on the very first day of the marriage might have affected her for a while. She might be febel minded person but then this cannot be taken to mean that she is suffering from mental disorder which makes her incapable of knowing the nature and consequences of her actions. The appellant does understand concept of a marriage as well as the consequences of a marriage tie.

Inability to manage his or her affairs is an essential attribute of an incurably unsounded mind. This is not present in the present case. There is no finding recorded by the Court below that when she was examined as a witness, there was lack of understanding on her part or that the question put to her were not comprehended by her or she was incoherent in any manner. Schizophrenia, as noticed above, is an illness of slow inseduous onset developing over years. There is no progress at work and at social level. School report, examination results record would indicate such a situation but in the present case, it has come on the record that the appellant has improved her educational qualification. As noticed, allegations have been made that it is not safe to live with the appellant but as indicated above, the appellant is maintaining her two children and no physical harm has been caused to them.

Accordingly, I am of the view that there is failure on the part of the respondent to establish that the appellant was suffering from a disease which was incurable. To repeat, there is no proof that the appellant is suffering from mental disorders on the day she was examined in the Court. The Court below has not made any effort to find out her mental condition and no observation has been made in this regard. There is no proof that mental condition of the appellant is such which could be covered by the term incurably unsound mind. The story that the appellant is suffering from mental disorders from the very beginning is not believable. It is because, two children were born out of the wedlock. The explanation that she suffered initially shock on the first day when she was subjected to search and some allegations were made can be believed. This appeal is accordingly allowed. The judgment and decree of the Court below is reversed.