

**(1974) 01 CAL CK 0001**

**Calcutta High Court**

**Case No:** Appeal No. 321 of 1971

Pronab Kumar Ghosh

APPELLANT

Vs

Krishna Ghosh

RESPONDENT

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**Date of Decision:** Jan. 20, 1974

**Acts Referred:**

- Hindu Marriage Act, 1955 - Section 10(1)(b), 12(1)(b), 12(1)(c), 13(1)(iii), 5(ii)

**Citation:** 78 CWN 504

**Hon'ble Judges:** K.J. Sengupta, J; A.K. Sinha, J

**Bench:** Division Bench

**Advocate:** B.C. Dutt and Tarak Nath Roy, for the Appellant; J.N. Nanda, for the Respondent

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### **Judgement**

K.J. Sengupta, J.

This appeal has been preferred against the judgment and decree passed by Shri P.K. Chanda, Judge, Third Bench of the City Civil Court at Calcutta in Matrimonial Suit No. 8 of 1968 refusing the prayer of the husband to annul his marriage with the opposite party respondent by decree of nullity on the grounds stated hereafter. The appellant and the respondent are both Hindus by religion. They were married on the 8th March, 1967 at Kiabani--a village in the district of Midnapur according to Hindu rites. Both the parties hailed from the same district. The husband's village is at Tatarpur about 25/30 miles from Kiabani. The respondent and her father live at Chandrakona another village within the district of Midnapur. Kiabani is the village where the uncle of the respondent resides.

2. In December, 1967 the husband filed an application u/s 12(1) (b) read with section 5(ii) of the Hindu Marriage Act, 1955 with a prayer for decree of nullity on the ground that the respondent was a lunatic at the time of her marriage and that the said fact was suppressed.

3. The husband alleged that the wife was a girl of unsound mind at the time when she was married with him. During the marriage some abnormalities were noticed in the conduct of the wife. The husband and the members of his family were fully convinced after the marriage was over that the respondent was a girl of unsound mind. She was found to behave abnormally. Accordingly, she had to be treated by the doctor while she was in the care and protection of the husband and his father. On treatment it was found that it was a case of Schizophrenia. On enquiry the husband discovered that the wife's insanity was hereditary and that she was lunatic at the time of the marriage.

4. The wife entered appearance and disputed all the statements made by her husband and denied all those allegations and contended that she was not demented at the time of her marriage. She, on the other hand, contended that immediately after her marriage with the petitioner she came to know about her husband's love affairs with a girl from before the marriage which temporarily upset" her; she also felt that she was not properly treated by her husband which treatment was expected of a newly married husband to a newly married bride; his treatment was always rough; coupled with that she was also ill treated by her mother-in-law, cumulative effect of all these ill treatments told upon her health which gradually broke down. It was also asserted that she was made to swallow some unknown herbs on the plea that it would restore her health. Instead of improving her condition it further deteriorated and she was attacked with temporary loss of mental equilibrium with spasm in her left hand. She was admitted in a nursing home and within two months her malady was completely cured but the husband refused to take her back. She was always willing to go and live with the husband as husband and wife but the husband refused to accept her.

5. The learned Judge of the Court below considered the respective cases of the parties and came to the finding that the petitioner failed to establish his allegations that the wife was a lunatic at the time of marriage and accordingly he refused the prayer of the husband for declaring his marriage with the respondent a nullity. In the result, the suit was dismissed. Being aggrieved by the said decision the husband has preferred this appeal.

6. Mr. Dutt learned Advocate, appearing on behalf of the appellant has challenged the said finding of the lower court on twofold grounds, namely, that the learned court below has failed to appreciate the standard of proof which is required to be discharged by the husband in a case like this and secondly, the learned court below has not properly considered the evidence on record which led to a failure of justice due to which the petitioner's prayer for annulment of their marriage as nullity has been refused.

7. It may be mentioned that the respondent has not appeared in this appeal. We also tried to serve the notice through special messenger from this court. Notice was served upon the father of the respondent. No arrangement has been made by the

father for the appearance of her daughter. The whereabouts of the daughter could not be found. The Deputy Registrar was asked to represent the respondent. Mr. J.N. Nanda was appointed as an Advocate to represent the Deputy Registrar. He appeared and made his submission which has duly been considered by us. At the direction of this court the learned Advocate appointed for the Deputy Registrar also issued registered notice to the respondent through her father and uncle but in spite of that no appearance has been made.

8. Mr. Dutt has, however, very elaborately dealt with the respective cases of the parties and placed before us the law and evidence relevant for the decision of this case.

9. Mr. Dutt has submitted that much difficulty is created in such a case as there is no clear cut definition of lunacy given in the Hindu Marriage Act, 1955 (hereinafter referred to as the Act). In the absence of such definition it has been submitted that it must carry the same meaning as contemplated u/s 3(5) of the Lunacy Act (Act IV of 1912). The definition of a "Lunatic" u/s 3(5) of the Lunacy Act regards an idiot as much a lunatic as a person of unsound mind and the Act admits of no different degrees of lunacy. It may, therefore, be a guiding factor. Nevertheless much will depend upon the meaning of the word "lunatic". In the absence of a statutory definition of "lunacy", the general connotation attached to that word may be accepted and in consequence the word "lunatic" must be taken in its ordinary significance. Similar is the views expressed by us-- in the case of (1) [Kartik Chandra Banerjee Vs. Sm. Manjurani Banerjee and Another](#), . That is a decision of the Bench presided over by my learned brother and myself. It has been held therein that "in the absence of statutory definition in the Hindu Marriage Act 1955 as to what is lunacy or who is a lunatic person, lunatic must be taken in its ordinary significance i.e. a person suffering from unsoundness of mind or insanity which might again be intermittent or permanent. The question is a complex one and must be decided by the court on the facts of each case.

10. In series of English cases it has, no doubt, been held that in the cases of Matrimonial offences, the standard of proof must be very high just as is expected in the cases of criminal offences. In English Law marriage is a contract, as in ordinary contract, the contracting parties must understand the term of the contract and knowing and understanding the same, should give their consent in order the contract to be binding on them, so also in the case of marriage, both the spouse must understand the nature of contract to which they were entering. They must appreciate that the marriage involves some duties and responsibilities normally attaching to a marriage. These are the incidents, depending on evidence, to judge whether a person is in fact, insane, or has sufficient power of understanding, vide the case of (11) *State of Park, Park v. Park* reported in A.E.R. 1953 (2) 1411.

11. In the case of Hindu marriage, as it stands in a different footing, it must be enough, if it is established that the spouse understands the implication of marriage.

Under the Hindu Law, the spouse must not be an idiot or lunatic at the time of marriage. The degree of lunacy or idiocy has not been mentioned in the Act. It is not unknown that a person may have sound understanding on certain points, having confused thoughts on the rest. Entire evidence on record is to be considered to ascertain the conduct of the spouse in question, his or her behaviour towards another, his or her habits as noticed, his or her loss in personality, if any, and such other noticable feature in order to ascertain whether that person is idiot or insane. Standard of proof in such cases is very high and the onus is invariably cast on the petitioner to establish the fact or insanity. The question next arises as to the standard of proof required to prove Matrimonial offences.

12. Before we proceed to discuss this point we may refer to an English case commonly known as (7) M<sup>r</sup> Naghton's case reported in, (1843) 10 cl. 200; 8 E.R. 718, wherein the question of what amount of mental capacity was required to make a man responsible for crime was considered. In the cases of adultery, it has consistently been held in our Supreme Court, that the petitioner, praying for divorce on the ground of adultery of one of the spouse, must prove the allegations beyond any reasonable doubt. A reference may be given to the decision in the case of (4) [Earnest John White Vs. Mrs. Kathleen Olive White and Others](#), . Similar standard of proof was held to be required in the cases of divorce on the ground of desertion and judicial separation. Vide the decisions in the case of (1) [Bipin Chander Jaisinghbhai Shah Vs. Prabhawati](#), and of (6) [Lachman Utamchand Kirpalani Vs. Meena alias Mota](#), respectively. A similar question also arose to be considered in the case of (8) Mahendra Manilal Nanavati v. Sushila Mahendra Nanavati by the Supreme Court. The said case has been reported in [Mahendra Manilal Nanavati Vs. Sushila Mahendra Nanavati](#), . That was a case in which the husband petitioner wanted to annul the marriage on the ground that the wife respondent was at the time of marriage pregnant by some person other than the petitioner. It has been held therein that in order to succeed the petitioner must prove that fact beyond reasonable doubt.

13. Mr. Dutt has, of course, submitted that in view of those decision he could not have raised any objection as to the standard of proof required in the cases arising out of similar facts. But in the instant case, he submits that such a standard of proof is not required of the petitioner. Mr. Dutt submits in such cases the balance of probability is required to be considered. In support of that submission, reference has been made to the case (2) Blyth v. Blyth reported in (1966) A.C. 643. That is a decision of the House of Lords-- wherein the majority views of their Lordships was "there is no statutory requirement that the absence of condonation must be proved beyond reasonable doubt. In matrimonial cases, as in other civil cases, the proof must be by a preponderance of probability, the degree of probability depending on the subject matter, so that in proportion as offence is grave, so the proof should be clear". After the above decision the law on this point has undergone changes to a certain extent in English cases. Accordingly in Ray-den's Law and Practice in Divorce

and Family matters (Eleventh edition) at page 182 it has been observed: "It is wrong, therefore, to apply an analogy of criminal law and to say that adultery must be proved with the same strictness as is required in a criminal case. As far as the standard of proof is concerned, adultery like any other ground for divorce, may be proved by a preponderance of probability; but it has been said that in proportion as the offence is grave, so ought the proof to be clear". Though such a change in the standard of proof is noticed in English Law, our courts, particularly our Supreme Court in such cases demanded a very strict proof, which is required in criminal cases that is to say "the proof beyond doubt". Reference to our Supreme Court decisions has already been given. It will not be out of place to refer to a Special Bench decision of this court in the case of (10) [Subrata Kumar Banerjee Vs. Dipti Banerjee](#), in which, I had the privilege to be one of the Judges. It has been held therein that it is the duty of the courts to pronounce a decree only when it is satisfied that the case has been proved beyond doubt as to the commission of matrimonial offence. It has further been laid down therein that the cumulative effect of the evidence on record should be such as to satisfy the conscience of the court for coming to the conclusion that such an offence has been committed by the parties. That was a case in which the husband pleaded adultery of his wife.

14. Let us now consider what standard of proof is required in a case where question of idocy or lunacy is involved. Similar matter was considered by Bijayesh Mukherjee and S.K. Datta JJ. in the case of (9) [Sm. Anima Roy Vs. Probodh Mohan Roy](#), . Their Lordships while dealing with the case of insanity and as to standard of proof required therein sought to make a distinction between cases like this wherein the question of insanity is involved and the cases where graver offence such as adultery comes for consideration. Such a distinction in the standard of proof has also been noted in Rayden on divorce (8th edition). While dealing with the standard of proof, there is a quotation on this subject at p. 222 which may be noted here: "At the end of the case, the court must be satisfied that there has been no collusion, connivance or condonation on the part of the petitioner; but while, in an allegation of condonation, the court need only be satisfied on a balance of probabilities, connivance certainly, and collusion probably, must be strictly proved by the person alleging it. The same standard as in the case of condonation applies to insanity." In the case of (10) Sm. Anima Roy v. Probodh Mohan Roy already referred (supra) the above principle has been accepted and it has been held that the standard of proof in such a case is not such as is required in a criminal case, but the court need only be satisfied on balance of probabilities.

15. Similar case was before my learned brother and myself for consideration. That is the case of (5) Kartick Chandra Banerjee v. Manjurani Banerjee, already referred. We held therein that "the burden of proving the existence of a sufficient degree of unsoundness of mind at the time of the marriage to invalidate it, is in all cases on the person impugning its validity. But if permanent unsoundness of mind is proved, the burden of showing that the marriage took place during a lucid interval lies on

the person seeking to uphold it."

16. Each case, therefore, has got to be considered on the facts involved in it. We are also of the views that in the absence of any allegation of permanent unsoundness of mind of the spouse in question, the onus is firmly cast on the petitioner who challenges the validity of the marriage on the ground of lunacy of the other spouse and it is his duty to adduce such materials from which a reasonable inference may be drawn as to the lunacy of the party and that the Court's conscience must be satisfied before such a decree annulling the marriage be passed. It is, therefore, the incumbent duty of the court to consider the materials on record the circumstances arising therefrom, the reliability of the witness and such other things which may arise for its consideration, before passing such a decree, specially when the effect of which is to put an end to a marital home.

17. Mr. Dutta has submitted that the materials on record are sufficient to satisfy the test required before the impugned marriage is declared to be a nullity. We are, however, faced with one difficulty. In spite of our best effort, we did not get any scope to see the girl. Mr. Dutt submits that the girl is purposely kept out of court, so that the court may not get any opportunity to form its opinion by talking with her in court as she must have been a lunatic. Lest she be exposed, she has been purposely kept out of court. In considering the entire history of the case, that fact may have some relevance but it cannot be a guiding factor to come to a conclusion that she must have been a lunatic at the time of marriage. Subsequent recovery of the person from the unsoundness of mind does not affect the question of validity of such marriage. Similarly subsequent attack of insanity to one of the spouse, who was otherwise sane at the time of marriage, cannot make the said marriage a nullity under the provisions of sec. 12(1) (b). Such a marriage can only be declared to be a nullity provided he or she be a lunatic at the time of marriage. Accordingly, therefore, we cannot agree with the said contention of Mr. Dutt. Mr. Nanda learned Advocate for the Deputy Registrar, however, has submitted that the learned trial court has considered all the materials on record in its proper aspect and has arrived to a correct finding, which should not be interfered with in this appeal. So we have very carefully gone through the evidence on record.

18. Before we enter into discussion of the evidence on record we may at the outset state that the entire case of the petitioner hinges on a single point that is to say whether Krishna was lunatic at the time of her marriage. In order to establish this fact it has been urged by the petitioner that she was at that time suffering from Schizophrenia. It is undisputed that all Schizophrenia cases are lunatics. But the converse may not be the case, as all lunatic persons do not suffer from Schizophrenia. The above observation of ours get support from the evidence of Dr. J.C. Sarkar P.W. 9.

19. In the text book of psychiatry by Handerson and Gillespies (Tenth edition) at p. 279, Schizophrenia has been described as an illness of slow, insidious onset

developing over years. The patient's relatives may report strange, odd, inappropriate behaviour. One should find out always if there has been progressive deterioration in the level of performance at work and socially; school reports, examination results at University or college and the employment record will provide objective and usually reliable indices of intellectual performance, its maintenance or decline. Dr. A.K. Deb (D.W. 4) in his book "An outline of Psychiatry" has dealt with this subject at p. 73 of that book. According to that doctor Schizophrenia usually starts about puberty and adolescence or shortly afterwards; this disorders usually appears in the teen agers or in early twenties. In the opinion of that author collateral inheritance, with a recessive character is frequently found in this disease, brothers and sisters being afflicted. While dealing with the symptoms Dr. Deb mentioned some of them, the patient sits or stands motionless in various attitude; he has no spontaneous activity, he is mute and is highly resistive to all attention. In Handerson and Gillespie's text book at p. 280, some of such symptom have been mentioned. It has been observed that one or two Questions may be sufficient to elicit the fact that the listless Schizophrenia does not have any subjective feeling of sadness, but on the otherhand, often feels contented and prefers to be left alone. Some of the medicines suggested in that text book at p. 286 is as follows: "E.C.T. is often of value in alleviating depressive symptoms and in disrupting acute hallucinatory states. Tranquillizing drugs, in particular chlorpromazine and trifluoperazine are useful in allaying turmoil and tension and in allowing the patient to become more accessible to other therapeutic influences. Dr. Dey also in his book at page 84 suggested these medicines in such cases. The malady is very dangerous in nature. Doctors in such cases always advise patient not to marry and even if he marries, he is allowed to marry with the proviso that parenthood is inadvisable. The above subject has fully been dealt with at p. 50 and 283 by Handerson and Gillespie, already referred.

20. We have discussed above the beneficial effect of that disease, its symptoms and some of its treatment. In the background of the same we shall discuss the evidence and all the materials on record to see whether Krishna was lunatic at the time of her marriage.

21. There are as many as nine witnesses examined on behalf of the petitioner. It is undisputed fact that the marriage took place between the petitioner and the respondent on the 8th March, 1967 in the house of their uncle at Kiabani. It may be noted here that the petitioner comes from the village Tatarpur and the house of the respondent and her father is situated in the village Chandrakona. Kiabani is the village where the uncle of the respondent resides. According to both parties the marriage was celebrated in that village in accordance with the Hindu rites. From the evidence of P.W. 1 the following facts have transpired that the father of the respondent did not attend the marriage, and the "sampradan" ceremony was performed by her uncle who had not been examined in this case. In this connection our attention has been drawn to the evidence of D.W. 1 Krishna who admitted that

she had on one or two occasions attack of fits before her marriage. In the written statement the respondent has stated or rather admitted in paragraph 10 that she had an attack of Schizophrenia. It was stated therein that the ill treatment of her mother-in-law completely shattered her health and she lost her mental equilibrium with spasm in her left hand; she was admitted in the Lake View Home at Calcutta for her treatment; that is a nursing home and the doctor diagnosed the case to be the case of Schizophrenia. That admission by itself is not sufficient to establish the case of the petitioner. Even if she was suffering from Schizophrenia at the time when she was examined by the doctor, it must have been sometimes after the marriage. As such the said admission is no indicator that Krishna was a lunatic at the time of her marriage. But these are the facts and circumstances which have to be considered and to be kept before us while dealing with the evidence on record. Another fact is also to be considered in this connection. Dilip Kumar Pan is the elder brother of Krishna. It is admitted that he was also attacked with mental derangement for which he had to be treated in a nursing home at Calcutta. The said fact has been established by the evidence of P.W. 6 Manoranjan and that of the doctor P.W. 4 Sunil Kumar Bhowmick who treated him while he was at the nursing home. Along with it the letter, Ext. 2, written by Tapan-- another brother of Krishna to the petitioner Pranab on the 22nd April, 1967 may be considered. The said letter was written just about a month after the marriage of the respondent with the petitioner. A careful reading of that letter will show that there was something wrong with the respondent even before marriage. Tapan frankly admitted in his letter that his parents had no right to "ignite fire" in the happy family of the petitioner. In this background let us examine the evidence on record. As already stated P.W. 1 Pranab is the first witness on the point. According to him, at the time of marriage the respondent refused to accept garland. At Kiabani on 9.3.67 just one day after, she refused to get down from palanquin even though she was requested by ladies. She had to be forcibly taken out. On the 10th March, 1967 when Bowbath ceremony was being celebrated she came out of the room and started crying in presence of guests. The said fact gets corroboration from the evidence of P.W. 7 Satish Chandra Pan. On the 10th March, 1967 when the Bowbath ceremony was being held she was examined by P.W. 3 Dr. Nakul Chandra Patra. He noticed that the respondent was running a slight temperature. He was of the opinion that the respondent was suffering from Schizophrenia for about a year. In cross-examination he gave his reasons for his coming to that conclusion. He found her muttering and noticed that she was inclined to stay in a lonely place. He also found the respondent, for no cause, to laugh. From these facts he was of the view that the respondent was suffering from the mental disease. He also issued the certificate which has been marked Ext. 3 in this case. But the doctor frankly admitted that he was not a specialist in the said branch of medical science. As such he advised her to be treated by a specialist. The evidence of P.W. 1 Pranab is being corroborated by the evidence of his father P.W. 2 Durgapada. Before dealing with the evidence of post period, that is to say, after the marriage of the respondent, let us now turn to some of the



evidence which has been adduced by the petitioner to show that she was not behaving normally even before marriage. Our attention has been drawn to the evidence of P.W. 6 and P.W. 8. P.W. 6 Manoranjan Sinha is a co-villager of the respondent's father. He also hails from Chandrakona. From his evidence it is established that Krishna's brother Dilip was insane and he had to be kept under chains. He also noticed Krishna standing on the road side in front of her father's house and smiling within her lips. Even after marriage he found her standing in the same position and noticed her muttering. P.W. 8 Pradyut is the friend of Tapan and Mantu--brothers of Krishna. He noticed one day Krishna shouting in front of her father's house and she was also seen muttering and singing. From the above evidence of P.W. 6 and P.W. 8 who are the co-villagers of the respondent's father some abnormalities in the behaviour of the respondent are noticed. Credibility of a witness is shaken when some affinity of a witness for the person he deposes, is established or when some enmity of that witness against whom he is deposing is noticed. In this case, however, both the factors are wanting to discredit the reliability of the statements made on oath by P.W. 6 and P.W. 8. There is no reason for which these persons would depose falsely against the respondent. No special affinity of these witness for the petitioner could even be suggested. There is no suggestion also that these witnesses were not pulling on well with the respondent and her father or that they had any enmity with them. In the absence of these allegations or even suggestions we find no reason to disbelieve those witnesses. It is no doubt, true that the behaviour as noticed in the respondent by these two witnesses per se cannot relate to the behaviour of a lunatic. We have discussed the symptoms which are usually noticed in the case of schizophrenia. It has been established beyond doubt that her brother Dilip suffered from mental derangement. Along with it we have seen that Tapan was, in fact, very much sorry for the conduct of his parents in marrying respondent with the petitioner thereby running the family peace and his life.

22. It is, no doubt, unfortunate that the respondent at the prime of her youth was attacked with such ailment, the result of which is disastrous. In case it is established that she was, in fact, suffering from Schizophrenia or insanity the peace of her life is also completely gone. If such a finding is arrived at the Court will have no other alternative but to pass a decree declaring her marriage with the petitioner a nullity, that is why a very cautious approach in this case should be made.

23. We have seen the feelings of the trial judge who wanted to explain every action of the girl i.e. the respondent by saying that those behaviours might be due to shyness of a village girl. True, those behaviours are sometimes noticed in the semi educated or illiterate girls having no such history of insanity in their family. But different consideration arises in this case, when it is seen, for the reasons stated, that those abnormal behaviours were not due to shyness but they were the outward manifestation of a girl suffering from insanity.

24. It has been argued by Mr. Dutt, that the parents of the respondent have acted very irresponsibly in marrying her with the petitioner, while they knew that she was suffering from such disease. Sometimes the parents think that some such abnormalities noticed in the behaviour of their ward might be cured by marriage. With the said intention the parents might have contemplated about that marriage. Some evidence have been led to show that parents were in know of that illness in their daughter and that is why they were conspicuous by their absence at the time of her marriage. It was also suggested that to keep that fact concealed, the marriage was celebrated in the village, other than the village where the parents live. These are some of the circumstances from which some such inference may be raised. But inference is no proof. Be that as it may, we are satisfied that the illness of Krishna was not disclosed to Pronab or his father at the time or before the talk of marriage was finalised.

25. The evidence on record, however, shows that the object and the purpose for which the respondent was married with the petitioner was completely frustrated. Let us now turn to the evidence of P.W. 5 Somnath Sen. He examined her on the 12th April, 1967. She was running slow temperature at that time. From his evidence it transpired that he enquired of the history of the case. But the respondent did not give any answer whatsoever. On the contrary she all on a sudden burst into laughter; the said abnormality is generally noticed in the case of a patient suffering from Schizophrenia. He examined her again in his chamber and he suspected it to be a case of mental disease. Accordingly, he referred the patient to Dr. P.K. Roy who is an expert of mental disease. Mr. Nanda learned Advocate representing the Deputy Registrar draw our attention to the fact that the said doctor has not been examined. It is, thowever, seen that another doctor of repute P.W. 9 Dr. J.C. Sarkar has been examined in this case. He is undoubtedly an expert in mental disease. He examined her on the 10th September, 1967 in the Lake View Home. He found her very much excited, restless having incoherent talks. According to this witness, she also did not answer the question put by him. Sometimes she was found laughing and sometimes she was found crying. She was kept under his observations till the 16th November, 1967. According to the opinion of that doctor, it was a case of Schizophrenia which means a severe type of mental disease. From this expert, we find that this is a disease which is not curable. The girl though not cured was taken out of the nursing home against the medical advice. This wintess also is of the view that there is every probability in such cases of the transmission of the disease to the children. That is also the opinion of the expert to which we have already referred. That is why the experts always advised such patient not to marry and not to beget children. He also granted the certificate Ext. 3(b) on the 5th December, 1967. Before we proceed further to consider the evidence of D.W. 9, Dr. Sarkar we like to discuss the evidence of D.W. 4 A.K. Deb. He is admittedly a Psychiatrist and an expert in mental diseases. Dr. Sarkar at the relevant time worked in his nursing home where Krishna was admitted. This doctor Deb stated that her father got her admitted in his

nursing home. At the time of admission, she was afraid and she was running about in fear and shouted. In his opinion she had been suffering from temporary mental imbalance due to unhappy incident after marriage. He further stated that this might be called acute panicky reaction. This particular kind of illness, according to him, was not insanity or lunacy. He, however, opined that it was not a case of Schizophrenia, this might be called acute panicky condition after hysteria. So we find the difference in the opinion between the two doctors on the same subject. Dr. Sarkar has given the reasons for his view but Dr. Deb has based his finding on the unhappy incident alleged to have taken place after the marriage of the respondent. He has not stated what is that unhappy incident. An attempt has been made on behalf of the respondent to show that she was ill treated by her mother-in-law and that she came to know from one of her husband's relation that the petitioner was in love affairs with another girl. The cumulative effect of the behaviour of the mother-in-law and the shocking news reported to her by the relation were responsible for completely shattering her mind and health. Dr. Deb must have been told by the relation of the respondent about the said behaviour of the mother-in-law and about the news alleged to have been divulged by one of the ladies of the family of the petitioner. We, however, find that there is no basis for making these allegations against the petitioner or his mother. It has come into evidence that the petitioner is the only child of his parents. Naturally, his wife must be an object of love and affection to his parents. With regard to another allegation as to the petitioner's love affairs with another girl there is nothing on record to establish that fact. These are wild and baseless allegations made on behalf of the respondent to belittle the petitioner and to shift the responsibility on his shoulder. That attempt, of course, has totally failed. There is no evidence worthy to note in support of those allegations made by the respondent against the petitioner. It is therefore, seen that Dr. Deb must have been carried away on these untrue allegations which were made against the petitioner and he was led to believe that the respondent was ill-treated which have resulted in the depression in her mind. He, of course, has not given the history sheet of the nursing home which must have been recorded and kept there. Be that as it may, in the background of the evidence already discussed and also other expert opinion regarding the illness of the respondent we are led to believe the evidence of Dr. Sarkar. In this connection we also refer to Ext. 4. prescription prescribing medicines for Krishna by Dr. Deb. It has also been noted therein that the patient has been discharged on risk bond against medical advice. That shows that the respondent was not at all cured while she was taken back from the said nursing home. The treatment which Dr. Deb suggested for the patient and also the treatment what was given, has been mentioned in Ext. 4. We have already discussed as to the medicines which are generally prescribed for the treatment of a patient suffering from Schizophrenia. The medicine as appears from Ext 4 exactly tallied with the same. It is, therefore, established that Dr. Deb also prescribed the same medicine treating the case as a case of Schizophrenia. In this connection we may mention paragraph 10 of the written statement wherein it has been stated that "all these thoughts

would reign supreme in the mind of the opposite party and she forgot to laugh. She could never be cheerful. She could not even sleep well. Gradually signs of temporary loss of mental equilibrium with a spasm in her left hand began to be noticed in her. Her father became very much afraid. Fortunately being a doctor the opposite party's father promptly took steps for her proper treatment and got her admitted in the Lake View Home. It is true that it was found to be a case of Schizophrenia associated with convulse seizure, i.e. temporary mental disorder with the onset of a spasm, within two months the said malady of the opposite party was completely cured." From the above it is seen that while the respondent was a patient in the Lake View Home of Dr. Deb, the diagnosis of her disease was that of Schizophrenia and that too was made by Dr. Deb. It does not lie in the month of the respondent to go back from her statement which she made in the written statement. That also shows that the Dr. Deb must have made confused statement while examined in court. It is, however established from the evidence of Dr. Deb that Schizophrenia is a curable disease. In this connection we may refer to the case of (11) [Narayan Ganesh Dastane Vs. Sucheta Narayan Dastane](#), . The learned lower court has referred to that decision in order to establish that the disease Schizophrenia was curable. The fact, of that case are distinguishable. Whether Schizophrenia is curable or not it does not matter much in the case with which we are concerned. Schizophrenia is a type of lunacy. There is no dispute as to that. If it is curable that also does not save the case in which one of the parties of the marriage was suffering from Schizophrenia at the time of marriage. In the case referred to above the petitioner took three-fold grounds. Firstly, it was prayed for a declaration annulling the marriage u/s 12 (1) (c) of the Hindu Marriage Act on the ground that the consent of the husband for the marriage was obtained by fraud. According to the husband the wife was suffering from Schizophrenia and she was treated in the mental hospital Yeravda sometime in the year 1954, but Schizophrenia was an incurable and dangerous form of unsoundness of mind being hereditary and recurring; and these facts were suppressed from the husband before he consented for the marriage. It is on that ground the husband prayed for the decree of nullity of the marriage. In the second alternative, the husband prayed for a decree of divorce u/s 13 (1) (iii) on the ground that the wife had been incurably of unsound mind for a continuous period of not less than three years immediately before the presentation of the petition. And thirdly, in the alternative he prayed for a decree for judicial separation u/s 10(1) (b) alleging that the wife treated him with such cruelty as to cause a reasonable apprehension in the mind of the husband that it would be harmful or injurious for him to live with her.

26. From the above it is seen that the fact of that case are quite different and distinguishable from the one under our consideration. As noticed in the above mentioned case the petitioner firstly wanted to have a decree of nullity on the ground that fraud was committed on him and the consent for marriage was procured as a result of that fraud. In the alternative he made a prayer for divorce on

the ground that the wife had been incurably of unsound mind for a continuous period of not less than three years immediately preceding the presentation of the petition. And thirdly, in the alternative he made a prayer for judicial separation for the ill treatment and cruelty of the wife as laid down u/s 10(1) (b) of the said Act. But in the instant case the question whether the insanity is curable or not does not arise at all. It is only to be seen whether any of the parties of the marriage is an idiot or a lunatic at the time of marriage. Accordingly, therefore, the learned lower court has fallen into an error by applying the principle of the case referred to in the above decision to the facts of this case. Whether Schizophrenia is a curable disease or not we are not concerned with it. But it is a dangerous disease, there is no doubt about it. Be that as it may, if the entire evidence be scanned and weighed in its proper perspective it will appear that the girl at the time of marriage must have been suffering from Schizophrenia just a type of lunacy. For the reasons stated above we do not venture to enter into discussion as to whether Schizophrenia is a curable disease or not. The evidence, however, show that the said disease at least is controllable to a certain extent by the help of medicine.

27. The learned trial court attached much weight to the evidence of D.W. 1 Krishna. We have also carefully gone through her evidence. Apparently it is the evidence of a normal person. But it should be remembered that she deposed long after her marriage and after she was treated by the doctors. Clearly, therefore, from her evidence as recorded on 31.7.70 no presumption either for or against her could be made as to an incidence alleged to have taken place about one and half years back. To some portion of her evidence we may refer. She has stated "about 3/4 months prior to my marriage I had attacks with fits on two occasions. Doctor attended me and prescribed medicines. Thereafter I had attacks with fits on the day following Full Sajiya. I have taken medicines prescribed by Shyam doctor from before my marriage". This portion of her evidence goes to show that she admittedly had some fits before her marriage and that she was treated by some doctor but unfortunately the said doctor has not been examined. Neither the prescriptions prescribing the medicine for her treatment have been produced in court. For the reasons stated her evidence cannot by itself go to show that she was not suffering from any mental derangement at the time of her marriage. D.W. 2, Narendra Deb Sharma acted as the priest and celebrated the marriage between the petitioner and the respondent. He, of course, stated that everything was normal. But his evidence has got to be taken with caution as he showed his over-anxiety to support the case of the respondent by voluntarily coming to court to depose in her favour. He admitted that he came to court though he did not receive any summons. D.W. 3, Pravakar Pan is the father of the respondent. He, of course, admitted that Krishna had hysteric fits on one or two occasions prior to her marriage. He wanted to say that he told the father of the petitioner as to the said ailment of Krishna at the time of marriage negotiation. This part of the story however, was not put to the father of the petitioner when he was examined in court. We have already discussed the evidence

of Dr. Deb, D.W. 4. These are the oral evidence on record. We have also referred to the important documents which have been marked exhibit in this case.

28. We have considered all the materials on record and the circumstances arising out of the same. The events which preceded, attended and followed the marriage unmistakably go to show that at the relevant time i.e. on the date of marriage Krishna must have been suffering from Schizophrenia.

29. We are unable to accept the finding of the learned trial court and we hereby set aside the said finding and the judgment and decree passed thereon.

30. In the result, we hold that the marriage in question is voidable and as such we allow the prayer of the petitioner and direct that his marriage with the opposite party be annulled by a decree of nullity. As it is a case between husband and wife and the result of our finding is to sever their relationship once for all we do not like to burden the wife with the costs of this litigation. Accordingly, we direct the parties to bear their respective costs.

A.K. Sinha, J.

I agree.