

HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on 27-11-2020Judgment delivered on 22-01-2021FAM No. 166 of 2018

1. Gopal Prasad Kumbhkar S/o Chotelal, Aged About 35 Years R/o Village Sivrinarayan, Tahsil Navagarh, District Janjgir - Champa Chhattisgarh.

---- Appellant

Versus

1. Radha W/o Gopal, D/o Dasharam, Aged About 29 Years, R/o Village Jashpur Police Station Kosir, Tahsil Sarangarh District Raigarh Chhattisgarh.

---- Respondent

For Appellant	Mr. H.V. Sharma, Advocate
For Respondent	None, though served

Hon'ble Mr. Prashant Kumar Mishra, J.Hon'ble Mrs. Rajani Dubey, J.CAV Judgment

The following judgment of the Court was delivered by ***Prashant Kumar Mishra, J.***

1. By the impugned judgment and decree passed by the Family Court, Janjgir-Champa, the husband/appellant's application under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') for dissolution of marriage and grant of decree of divorce on the ground of adultery has been dismissed.
2. The parties were married according to the Hindu rituals in the year 2004. Soon after the marriage they resided together at Bhopal

(Madhya Pradesh) till 2011 and they have two sons namely; Manish & Tushar out of the wedlock. During their stay at Bhopal the respondent/wife performed sexual intercourse with another person on 3-4 occasions due to which the dispute occurred between them and despite persuasion she did not improve her habits and conduct, therefore, in 2011 the entire family shifted to Shivrinarayan, however, here also the respondent started having sexual intercourse with one Vishnu Kesharwani. On 21-5-2017 the respondent had sexual intercourse with Vishnu Kesharwani when the appellant was not present in the house and the incident was witnessed by his son Manish, aged about 12 years. When the appellant returned to the house he saw Vishnu leaving the house. Vishnu himself admitted of his sexual relation with the respondent in the presence of Hemant Sahu of village Tushma and Mahendra Khare of village Kharod. After the incident on 21-5-2017 the respondent started residing at her parental village Jashpur, Police Station Kosir, District Raigarh. During meeting of the caste panchayat on 2-6-2017 and thereafter on 29-10-2017 the respondent apologized and promised not to commit the mistake in future.

3. The respondent appeared before the Family Court on 28-4-2018, however, she remained absent on subsequent hearing, therefore, she was proceeded *ex parte* and the suit was tried even without her written statement.
4. In course of proceeding before the Family Court the appellant examined himself as AW-1. He reiterated the plaint allegations and in absence of respondent there is no cross-examination of the appellant. Manish (son of the appellant) was examined as AW-2. He would state that he saw one person entering into the bedroom of his mother and when his father reached his mother did not open the door and took the other person to a different room. Finding opportunity the other person ran away from the house which was

witnessed by his father. Lathel Ram (AW-3) is the General Secretary of the Kumbhkar Samaj. He proves that during meeting of the caste panchayat the respondent admitted her mistake and promised not repeat in future. Similar is the statement of AW-4 Mohanlal who is the President of Kumbhkar Samaj.

5. The plaint allegation about commission of adultery by the respondent has been substantiated by the witnesses examined by the appellant whose statements have remained uncontroverted in absence of cross-examination. Even the plaint allegations have not been denied because the respondent did not file written statement despite having remained present in the Court on the date of hearing after receipt of notice.
6. Considering the state of evidence on record, we are of the considered view that the appellant has proved the ground of adultery because their son Manish has seen the other person entering the bedroom of the respondent in the night of 21-5-2017 and the respondent admits, of living in adultery, in the meeting of the caste panchayat.
7. Albeit there can be no presumption or inference of sexual intercourse from the evidence of opportunity alone or that respondent was seen with another man in the bedroom, but it is required to be bear in mind that the proceedings for dissolution of marriage under the Act are of civil nature and the nature of proof required is on the touchstone of 'preponderance of probabilities' and not 'beyond doubt'. If fair inference of adultery can be drawn from the circumstances of the case and the same is coupled with admission by the erring spouse, the ground of adultery shall be treated to be proved.
8. After amendment incorporated in Section 13 of the Act by Marriage Laws (Amendment) Act, 68 of 1976, the rigour of establishing 'living in adultery' is reduced and what is now

required to be proved is that 'the other party has after the solemnization of the marriage had voluntary sexual intercourse with any person other than his or her spouse'. Thus, even one instance of sexual relation with any other person would constitute a ground of adultery.

9. In view of the above discussion, the appeal is allowed; the impugned judgment & decree passed by the Family Court is set aside; and the marriage between the parties is dissolved by decree of divorce.
10. A decree be drawn accordingly.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Rajani Dubey)
Judge

Gowri