Kerala High Court

V. R. Krishna Iyer, J.

N. KRISHNA IYER v. LAKSHMI AMMAL

S. A. No. 8 of 1970

06 July, 1970

Evidence Act, 1872, S.21 - A policeman can prove in the Court the admissions made to him by a party except the provisions made in S.162 of Criminal Procedure Code and S.25 of Evidence Act (Para 2)

Practice and Procedure - Long intervals in the trial may spoil the total effect of the evidence (Para 3)

C. A. No. 4352 dated July 10, 1962 (Supreme Court of Cyprus) ' 386 US. 213; Referred to

Practice and Procedure - The absence of a party to appear or failure to give evidence does not mean that the Court follow the mechanical rule of decreeing what the plaintiff has asked.(Para 5)

C. S. Ananthakrishna Iyer; For Appellant

G. Viswanatha Iyer; K. Sreedharan; K. M. Devadathan; For Respondent

JUDGMENT

1. A matrimonial mess which stemmed out of a child marriage gone through in the twenties of this century is the theme of this litigation. A poor, small girl before her puberty was wedded to a poor teen age boy but there was no consummation, the young husband having left for Bombay unable to continue his studies, the promised pittance of a dowry not having been paid. Thus separated by economic estrangement, the bride and bridegroom lived apart even thereafter, the wife picking a living in a humble way and the husband making good as a clerk in Bombay and by sheer industrious habits rising to a relatively good position. Nature asserted itself, the man married another, had children by her and is settled well in life now. The first wife in the evening of her life having lost her parents and become near destitute, sued her husband for arrears of maintenance for the permissible period of three years and for future maintenance at the rate of Rs. 100 per mensem. The defendant husband taking advantage of the fact that a Hindu marriage is not recorded or registered, and in the hope that the long lapse of time would have obliterated evidence of their alliance, went to the extreme extent of denying the marital relationship and of course, challenged the quantum.

2 Instituted as a pauper suit in March 1965, the action actually came up for trial only in 1967. On 31-3-1967 the plaintiff was examined in chief and various documents, including Exts. P8 and P9, were marked. She spoke to her case, corroborated by these two exhibits. When the opportunity for cross examination arose, the advocate for the defendant moved for an adjournment which he got on condition of payment of day cost. On the adjourned date, viz., 6-4-1967, an application for adjournment was again made but was refused. The advocate and the party were absent and the suit was decreed as prayed fort An appeal was carried to the District Court unsuccessfully. The learned District Judge set out the facts and the story of adjournments

ad libitum and felt that there was gross negligence in the conduct of the suit on the part of the defendant and no sufficient cause for his absence. He confirmed the decree of the Trial Court. Of course, Ext. P9, a rather important document in the case, was ignored by the learned District Judge on a wrong assumption that statements given to the Police should not be looked into. How can a narration by the husband to the police of his conjugal vicissitudes, containing clinching admissions, signed by him, come under any legal embargo if it were recorded not from an accused person nor in connection with any criminal investigation but on an interrogation in a curious petition by the neglected wife? I mention this because only S.162 Crl. PC. and S.25 of the Evidence Act ordinarily ban the admissibility of statements given to the police, neither of which operates in the present 'case. The policeman like any other man can prove admissions made to him by a party if they are otherwise relevant and not excluded by statutory taboo. It is unfortunate that the learned District Judge has become a victim of the popular fallacy that statements to the Police are always tainted and universally inadmissible. The error is regrettable -- for a judge to commit. However, on the materials on record, the learned District Judge was satisfied that the decree was correct and, further more, that the defendant was *ex parte* without any valid cause.

3 The lame excuse that opportunity for leading evidence had "not been given to the appellant has only to be mentioned to be rejected. A trial once begun should go from day to day and long intervals spoil the total effect of the evidence and the ability of the judge to size up the credibility of the testimony. Long protraction after the evidence has commenced, as is manifest in this case, is a denial of fair trial and, therefore, of justice. I had recent occasion to observe that staggered recording of evidence spread over months is highly objectionable and in the Constitutions of countries, such as Cyprus, there is express prohibition of such a practice. Here is an observation of the Supreme Gouri of Cyprus which I may usefully extract:
"It is very regrettable that the trial judge admits in his judgment that the piecemeal hearing of the case increased the cost of litigation. In a judgment delivered by the High Court some time prior to the hearing of this case by the trial Judge, observations were made by the High Court deprecating the piecemeal hearing of a case and the delays in the delivery of reserved judgments by Trial Courts. Furthermore, the view was expressed that adjournments should, as far as possible, be avoided, except in unusual circumstances, and that once a trial was begun it should proceed continuously day in and day out, where possible, until its conclusion. (Tsiartas and another v. Yiapana, Civil Appeal No. 4352 dated July 10, 1962).

It is also pertinent to quote the observations of Earl Warren, the Chief Justice of the U. S. Supreme Court in Kloper v. North Carolina (386 US. 213).

"We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment. That right has its roots at the very foundation of our English law heritage. Its first articulation in modern jurisprudence appears to have been made in Magna Carta (1215), wherein it was written, 'we will sell to no man, we will not deny or defer to any man either justice or right.'

I need not adduce additional reasons why I overrule the plea of denial of reasonable opportunity.

4 I have been taken through the evidence in the case by both sides and I am satisfied that there is no ground to interfere with the finding concurrently rendered on the status of the parties. Counsel's prayer for another opportunity to examine his client after he threw away the occasions he got by the adjournments granted by the Trial Court is hardly serious.

5 However, certain aspects on the human side of this saga strike me as worthy of judicial consideration. The absence of a party or his failure to give evidence does not mean that the court can abdicate its duty to give consideration to the ensemble of circumstances in a case and follow the mechanical rule of decreeing what the plaintiff has asked for or her evidence formally warrants. The humanist compulsions of this case persuade me to moderate the rate of maintenance decreed.

6 Here is a man who married a girl in 1925 when he was a teenager and she had not even attained puberty. Pre-puberty marriages among Brahmins were prevalent in those days. There is also the circumstance that after she attained puberty, the defendant had not the occasion to meet her or live with her. It is admitted that he has taken another to wife and has children by her. It must be remembered that he had passed only the Vth form and could not be occupying a high post. He had left home in search of a job in a spirit of adolescent adventure, had secured some petty employment in Bombay and was drawing a salary of Rs. 105 in 1934. It is fair to notice another circumstance, subsequent, perhaps, to the filing of the suit. He has now retired from service, being 65. We have to take an overall view of these developments when fixing the rate of maintenance and quantifying the arrears of maintenance. True it is that, on the other side, the plaintiff, a lonely woman, forced into virtual spinster hood by her husband, if I may say so, who has lost her parents and does not have the prop of any rich relation has been making a desperate livelihood by doing domestic service in other people's houses. She is also past middle age and may not be able to make both ends meet without the help of her husband. The totality of these circumstances persuaded me to suggest to counsel that the rate of Rs. 100 decreed was excessive and something more moderate and just should be fixed in consultation with the parties. Time was sought in this behalf but no fruitful solution could be found. Nevertheless, both sides agreed with me that justice required a revision of the amount decreed. To force ah unrealistically excessive amount out of one who has to maintain, within his limited resources, another wife and children is to visit upon these innocents a vicarious hardship. After having given some thought to the factors brought to my notice by the advocates on both sides, a just direction, I am inclined to think, would be to award by way of arrears of maintenance a sum of Rs. 2000. The will also be entitled to future maintenance from the date of suit which, I may mention, is 24-3-1965 (the date on which the pauper application was presented to the court) at the rats of Rs. 35 per month. The arrears will be paid within two months from today and will carry an interest at the rate of 6%. The maintenance decreed from the date of suit also will carry 6% interest. Counsel for the appellant assures the court that his client will not drive the respondent to executing the decree but will make suitable provision for the monthly payments contemplated on the due dates viz., the first of every month, The decree under appeal is modified to the extent indicated above and is otherwise dismissed. The only wholesome direction regarding costs will be that parties will bear them throughout. Post on 16-9-1970.
A statement has been filed by. counsel for the appellant which shows that on a payment of Rs. 4928.50 the arrears and future maintenance upto 31-10-1970, at the rate decreed by this Court, would be discharged. That sum (Rs. 4928.20) has been paid to counsel for the respondent today in court and, therefore, the claim for maintenance upto and inclusive of 31-10-1970 is recorded as discharged. Counsel for the appellant represents that his client would continue to make deposits in the Bank account of the respondent and counsel for the respondent agrees to inform the appellant's counsel the account to which such amount should be paid periodically. lam happy to note that the role played by counsel on both sides has been extremely constructive and fruitful of such harmony as the deteriorated situation between the husband and the wife admits of.