

1966
Feb. 2,
Mar. 12, 28
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CHRYSO JAMES
LAWRENCE
DUNNE
(OTHERWISE
CHRYSO
EVANGELOU)
v.
JAMES LAWRENCE
DUNNE

[VASSILIADES, J.]

CHRYSO JAMES LAWRENCE DUNNE, (OTHERWISE
CHRYSO EVANGELOU),

Petitioner,

v.

JAMES LAWRENCE DUNNE,

Respondent.

(Matrimonial petition No. 10/65).

Matrimonial Causes—Dissolution of marriage—Jurisdiction—Cruelty—Petitioner wife, a Greek Cypriot and a member of the Greek Orthodox Church of Cyprus—Respondent husband an Englishman, member of the Catholic Church—Couple married at the District Officer's Office, Nicosia, on October 21, 1964, under the Civil Marriage Law, Cap. 279—A religious marriage followed in a Greek Orthodox Church, a few days later Respondent's domicile unknown—Jurisdiction assumed under section 18 (1) (b) of the Matrimonial Causes Act, 1950 (English).

Matrimonial Causes—Divorce—Cruelty—Deception of wife by husband—Husband's sexual perversion—Beating and molestation of wife—Desertion by husband—Husband's conduct amounting to cruelty.

In this wife's petition for divorce on the ground of cruelty two issues arose for consideration. The first one being the question of jurisdiction and the second the question of cruelty.

The petitioner wife is a Greek Cypriot and a member of the Greek Orthodox Church; and the respondent presented himself as an Englishman, and a member of the Roman Catholic Church. No evidence was adduced either as to the husband's domicile of origin or that of choice.

The couple got married at the District Officer's Office Nicosia, on October 21, 1964, under the Civil Marriage Law Cap. 279; and a church marriage followed in a Greek-Orthodox Church, a few days later.

On the question of cruelty the Court heard the evidence of the petitioner who certified that the respondent attempt-

ted carnal knowledge of the wife against the order of nature : and when she declined and resisted the husband used force. She would not give in and in the struggle which followed he slapped her face and struck her with his fist on the head. Scenes of similar nature occurred on subsequent occasions when respondent's perverted sexual tendencies took another form. He tried to get the petitioner to lick his genital organ : and when she declined and resisted he beat her repeatedly with hand and fist.

The petitioner's evidence with regard to one of such occasions, was corroborated by that of her mother and by a neighbour.

The Court found that the evidence of the wife was amply corroborated by the other evidence and that it could safely act on it. In granting the petition, the Court :

Held, on the question of jurisdiction .

I think that the case falls within the provisions of section 18(1)(b) of the Matrimonial Causes Act, 1950, which constitute the law governing the matter. (Rayden on Divorce, 9th Edition p. 1388, and paragraph 5 at p. 29). Following other cases where the question of jurisdiction arose, the last of which is *Androulla Knight v. Douglas Knight*, (Matrimonial Petition 10/63) decided in this Court on the 26.2.1966 (unreported), I have no difficulty in holding that the Court has jurisdiction to entertain the petition in hand. I am, moreover, fortified in this view by the decision of Josephides, J., in application No. 3/64 between the same parties, where, on the 15th October, 1965, he granted leave to the petitioner, under section 2(1) of the Act, to file this petition before the expiration of three years from the date of the marriage ((1965) 1 C.L.R. p. 344).

Held, as to the question of cruelty :

(1) As to the second issue, that of cruelty, I am indebted to counsel for referring me to *Carpenter v. Carpenter*, [1955] 2 All E.R. p. 449, relying upon which counsel submitted that the combined effect of respondent's conduct in this case, amounts to cruelty, sufficient to establish the ground in section 1(1)(c) of the Matrimonial Causes Act, 1950, upon which the petitioner seeks dissolution of the marriage. There is, indeed, considerable matter in common between *Carpenter's* case and the case in hand.

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(2) During the ten years which have elapsed since *Carpenter's* case, cruelty in matrimonial relations as a ground for divorce, under section 1(1)(c) of the 1950 Act, was considered and discussed in a number of cases, in the highest jurisdiction in England. I had occasion to refer to some of them recently in *Levonian v. Levonian* ((1965) 1 C.L.R. 339) where there is a quotation from the speech of Lord Pearce in *Gollins v. Gollins* [1964] A.C. p. 644 which, I shall repeat here with all due respect:

“It is impossible to give a comprehensive definition of cruelty, but when reprehensive conduct causes injury to health, or apprehension of it, it is, I think cruelty, if a reasonable person, after taking due account of the temperament and all the other particular circumstances, would consider that the conduct complained of is such that this spouse should not be called on to endure it”. ([1965] 2 W.L.R. 32, at p. 36).

In the present case, after taking due account of all circumstances as presented by the evidence, I have no hesitation in reaching the conclusion that the conduct of the husband since the celebration of the marriage, creates apprehension of injury to the health of the wife, if she is called on to endure such conduct in matrimonial vinculum with such a husband. I, therefore, hold that she is entitled to the remedy sought by the petition.

There will be a decree nisi, with costs.

*Decree nisi on the ground of
cruelty granted, with costs.*

Cases referred to :

Androulla Knight v. Douglas Knight; Matrimonial Petition No. 10/63 decided on the 26.2.66, unreported;

Carpenter v. Carpenter [1955] 2 All E.R. 449;

Levonian v. Levonian (1965) 1 C.L.R. p. 339;

Gollins v. Gollins [1964] A.C. 644; [1965] 2 W.L.R. 32, p. 36.

Matrimonial Petition.

Petition for dissolution of marriage because of the husband's cruelty.

L. Clerides, for the petitioner.

Respondent not appearing. Duly served.

Cur. adv. vult.

The following judgment was delivered by :

VASSILIADES, J. : Short and shocking as the facts in this case may be, they present certain difficulties on the legal aspect of the proceedings. The first arises on the question of jurisdiction ; and the second on the ground of cruelty, upon which the petitioning wife seeks dissolution of the marriage. The petitioner has to overcome them both.

On the merits there is ample substance in this petition which attracts every possible sympathy for this victim of such frivolity on the part of her parents, and such callousness on the part of the person who became her husband.

The petitioner, a young girl of sixteen years of age, the daughter of a house painter with eight children, was given in marriage to a stranger of the age of nineteen who presented himself as a medical student, but was in fact an army deserter. The lack of sense of responsibility on the part of the family of this girl was as shocking as the shameful lack of decency on the part of the individual who married her.

There was a civil marriage at the Commissioner's Office, Nicosia, on October 21, 1964 ; and a church marriage in a Greek-Orthodox church, a few days later. The petitioner and her family are Cypriots, Greek-Orthodox by religion, the respondent presented himself as an Englishman, member of the Roman Catholic Church. The marriage was the result of false pretences on the part of the respondent and a friend of his (now a person wanted by the Police for bigamy and other crimes) who introduced the respondent to petitioner's family ; but the validity of the marriage is not in issue in this proceeding. Nor, apparently, the responsibility of the Marriage Officer has, as yet, been the subject of the enquiry which the facts of the case seem to call for.

I have no evidence before me as to the husband's domicile ; either that of origin, or that of choice, if any. The couple, according to the evidence, made no plans as to their matrimonial home ; nor as to their residence. In fact they hardly had a common language between them ; and do not seem to have given much thought to their future.

After their marriage, the parties lived together for about three weeks in the petitioner's parental home, when the respondent disappeared, leaving a note to his wife which is before me as exhibit 2. I shall give it here verbatim as it throws light on some of the background of this case ; it reads :

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“ Dear Chryso,

I am sorry our marriage did not work out because I have been cruel to you and beat you several times. I could not help it.

Perhaps it is due to the difference of our mentality.

I could not understand what you were saying most of the time.

I decided that the only way for us is to live apart. I am going to the R.A.F. tomorrow and I may not see you again.

Good luck.

James Lawrence Dunne”.

In fact the respondent disappeared ; he could not be traced by the Police, who eventually discovered that he was an Army deserter ; and that he had absconded the Island by air for London, soon after his disappearance from petitioner’s home. He has not been actually traced ever since.

Petitioner’s story of her experiences with the respondent during the short period between their marriage and respondent’s desertion, is appalling. After taking her virginity in a normal marital intercourse on the first night of their marriage, the respondent attempted carnal knowledge of the wife against the order of nature. She declined and resisted. He used force. She would not give in. And in that struggle he slapped her face and struck her with his fist on the head. On subsequent occasions, scenes of similar nature occurred. Respondent’s perverted sexual tendencies took another form. He tried to get the petitioner to lick his genital organ ; and when she declined and resisted, he beat her repeatedly with hand and fist.

On one of such occasions, petitioner’s mother, having heard the noise of a fight in the parties’ bedroom, went in together with another woman, and saw the petitioner in tears with a bleeding mouth from her husband’s beating. She took her daughter away from the room ; and having no common language with her son-in-law, she called in an interpreter the following day, and asked for an explanation. This interpreter was a neighbour who spoke English ; and who gave evidence in this case to the effect that the respondent

admitted beating and molesting the petitioner ; and that, offering a full apology, promised that he would not do such things again.

The evidence is that the respondent did not keep his promise for more than a day or two, after which he indulged in similar behaviour. The wife's evidence is that scenes of this nature occurred on five or six occasions before respondent's departure, ending always with the use of violence on his part against the wife, who was physically a much weaker person.

The evidence of the wife is amply corroborated by other evidence ; and, in any case, is such that I feel that I can safely act on it. I find accordingly.

On this evidence I have to decide the two main issues arising in this case : the question of jurisdiction; and that of cruelty

As to the first, I think that the case falls within the provisions of section 18 (1)(b) of the Matrimonial Causes Act, 1950, which constitute the law governing the matter. (Rayden on Divorce, 9th Edition p. 1388, and paragraph 5 at p. 29). Following other cases where the question of jurisdiction arose, the last of which is *Androulla Knight v. Douglas Knight* (Matrimonial Petition 10/63) decided in this Court on the 26.2.1966*, I have no difficulty in holding that the Court has jurisdiction to entertain the petition in hand. I am, moreover, fortified in this view by the decision of Josephides, J. in application No. 3/64 between the same parties, where, on the 15th October, 1965, he granted leave to the petitioner, under section 2 (1) of the Act, to file this petition before the expiration of three years from the date of the marriage ((1965) 1 C.L.R. 344).

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There will be a *decree nisi*, with costs.

Decree nisi on the ground of cruelty granted, with costs.