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A. Gunna Rao Vs. Tara Beharani

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Court : Orissa

Decided On : May-07-1970

Reported in : 1971CriLJ1044

Judge : S. Acharya, J.

Appellant : A. Gunna Rao

Respondent : Tara Beharani

Judgement :

ORDER

S. Acharya, J.

1. This revision arises out of an order Under Section 488, Criminal P.C. directing the petitioner, the opposite party in the court below, to pay a monthly maintenance of Rs. 20/- to the opposite party, the petitioner in the Court below, for maintaining her female child.

2. The opposite party's allegations are as follows: The opposite party is a widow and was staying with her mother in Ganguliwari Sahi. The petitioner was an office peon in the court of the Munsif Sub-Divisional Magistrate, Parlakhemundi. On the request of the opposite party the petitioner arranged a job for her son in the Samasthanam office of the Maharaja of Parlakhemundi, and so the opposite party was obliged to the petitioner and he gradually developed intimacy with her and started visiting her in the house of her mother where she was at first residing. In course of time the petitioner indulged in sexual intercourse with the opposite party in the said house during the ab- sence of her mother, as a result of which the opposite party conceived through the petitioner.

After about six or seven months of her pregnancy, and when the said'fact was known to her mother, she drove the opposite party out from her house just prior to the car festival of the year 1966. The petitioner then came to her rescue, and kept her on the verandah of P.W. 4 for a day and then brought her to a house at Gujarathipetta, where she lived for a month. Thereafter the petitioner took her to a house in Golla Street. While living there she gave birth to a female child in the Maternity Ward of the Government Hospital.

She further alleged that it was the petitioner who was all along maintaining her ever since she was driven out from her mother's house; but just before a month of the delivery of the child the petitioner stopped coming to her, and never bothered to look after or pay any maintenance to her or to her child born through the petitioner. In the

Vaccination Register, Ext. 1, and in the Birth Registers of the Hospital and Municipality. Exts. 2 and 2/1 respectively, the petitioner's name was entered as the father of the child born to the opposite party. On these averments, maintenance for the child, born to the opposite party, was claimed at Rs. 25/- per month.

3. The petitioner opposed the above petition for maintenance on the following grounds: He denied all the allegations excepting the fact that he had arranged a job for the son of the opposite party in the office of the Maharaja of Parlakhemundi. He denied having any complicity and/or intimacy with the opposite party, and specifically asserted that he never had any sexual intercourse with the opposite party at any time or arranged any accommodation for her at any place, as alleged by the opposite party. He also denied to have maintained the opposite party as any time.

4. On the above pleadings of the parties and the evidence on record, the court below ordered that Rs. 20/- per month is to be paid by the petitioner to the opposite party to maintain her female child.

5. Mr. Murty, the learned Counsel for the petitioner, seriously challenged the findings of the court below on the ground that on the evidence on record it has not at all been established that the petitioner is the father of the child born to the opposite party. It was also urged that the court below instead of casting the onus on the opposite party to prove that the petitioner was the father of the child, acted illegally in starting with an initial prejudice against the petitioner by presuming his complicity in the birth of the illegitimate child.

6. In this case seven witnesses were examined on behalf of the opposite party. Of these, P. Ws. 1 to 3 are witnesses to the relationship of the petitioner and the opposite party after she in advanced state of pregnancy was driven out by her mother from her house in Ganguliwari Sahi. The opposite party, on her own admission, was driven out of her mother's house when she had already conceived for more than seven months. P.W. 6 is the Vaccinator of the Parlakhemundi Municipality. He vaccinated the child on 16-5-1967 and made the entry Ext. 1, on the information of the opposite party, to the effect that the petitioner was the father of the said child. P.W. 7 is an Assistant of the Parlakhemundi Municipality who Droved Ext. 2/1, the relevant entry in the Birth Register made from the hospital extracts Ext. 2 about births of 1966, showing that the opposite party gave birth to a child on 20-10-1966 and the petitioner was mentioned therein as the father of the said child. P.W. 5 is the opposite party. P.W. 4 who appeared in the court in female garb though he was actually a male as stated by him, is the only witness who stated about the association of the petitioner with the opposite party prior to the period of conception of the opposite party.

The court below in discussing the evidence of P.W. 4 did not take into consideration the salient features of his evidence as pointed out by Mr. Murty, the learned Counsel for the petitioner It is also seen from the impugned order that much reliance was placed and importance attached to the entries in the vaccination Register (Ext. 1), and the Births Register of the Hospital and Municipality (Ext. 2 and 2/1), without properly knowing and appreciating their evidentiary value.

7. It is well settled that when a child is born out of lawful wedlock, the onus lies squarely on the mother to establish the paternity of such a child, and it is for her to prove that the person from whom she claims maintenance for the child is the father of the child before that person can be called upon to disprove the allegation of the

mother; and that it is prima facie improper to accept without corroboration the mere statement on oath of the mother who asserts that a certain man to whom she is not married is the father of the child (Prasad Gareri v. Mt. Kesari. A.I.R. 1941 Pat 444). In B. Mahadeva Rao v. Yesoda Bai. MR 1962 Mad 141 it is held that

No presumption of law can arise with regard to the paternity of infants born out of the lawful wedlock, unless it' is established beyond doubt that the woman was the exclusive kept mistress of the man and that the relationship was virtually one of monogamy, though there might not have been a legal marriage.

P. Ws. 1 to 3 came to know the opposite party and her association with the petitioner after she came to their respective Mahallas being driven away by her mother after seven months of her pregnancy, and hence their evidence would not be of any avail to the opposite party, and would not go to prove her case that the petitioner, from whom she claims maintenance for her child, is the father of child. P.W. 5, the opposite party, in cross-examination stated 'My mother only knew about my connection with the respondent' (petitioner herein). At another place in her cross-examination she stated that her mother and brother knew about her illicit connection with the petitioner at the time she was staying in her mother's house. Neither the mother nor the brother who, according to the opposite party herself, are the only persons who knew about her illicit connection with the petitioner, has been examined in this case.

P.W. 4 asserting himself to be a male, appeared in female's garb in the court below. He claimed to be a neighbour of opposite party's mother. In examination-in-chief he narrated in some detail about the opposite party's coming to her mother's house after the death of her husband; her association with the petitioner and the time when the petitioner used to visit the opposite party; her stay at different places after being driven out by her mother; and the fact of her being maintained in these places by the petitioner. Having said all that in his examination-in-chief, in his cross-examination he made various statements which would make his evidence-in-chief doubtful, if not absolutely unacceptable. In cross-examination he said that he did not go to the opposite party when she was at her mother's house. He could not say to whom the opposite party was married, nor did he know to which place her husband belonged and whether he was living or dead. The opposite party admittedly had a son about 17 years old, but P.W. 4 could not state the age and the whereabouts of that soji. It is extremely difficult to place reliance on the evidence of such a witness in order to seek corroboration of the highly interested evidence of the opposite party. The tenor of his evidence does not inspire confidence.

Moreover, at two different places P.W. 5 admitted that it was her mother alone who knew about her intimacy and connection with the petitioner and his visits to her. That completely nullifies the effect and the value of the evidence of P.W. 4. Thus one is left only with the evidence of P.W. 5, the mother of the child, to the effect that the petitioner was the author of the conception out of which the child was born. Law is well settled, as stated above, that it is for the mother to prove that the person, from whom she claims maintenance for her child, born out of lawful wedlock, is actually the father of the child. Her evidence to that effect cannot but be highly interested, and it would be unreasonable and improper for any court to act merely on her own words, even though on oath, without proper and independent corroboration.

The only other evidence on record on which reliance was placed by the court below are the entries in the Vaccination Register (Ext. 1), Birth Register of the Government

Hospital (Ext. 2) and Register of Births of the Municipality (Ext. 2/1). P.W. 6 stated that he made the entry in Ext. 1 on the information of the opposite party. P.W. 7 who proved Exts 2 and 2/1 stated that he made the entry in Ext. 2/1 as per the entry in Ext. 2. The entry in the Hospital Birth Register, Ext. 2, was evidently made on the information of the opposite party as on her own admission, the petitioner shunned her association one month before the birth of the child.

In the case of : AIR1962Mad141 , it is held that where in a case of this nature, the name of the father is entered in the Birth Register on the information furnished by the mother, such entry is not evidence of paternity, being a unilateral statement by an interested party. That being so, all the above entries in Exts. 1, 2 and 2/1, made on the information of the opposite party, without the knowledge, information or even the tacit consent of the petitioner are, therefore, of no weight or value and cannot be utilised to corroborate the evidence of the opposite party to the above effect.

Thus there is absolutely no evidence on record either oral or documentary to corroborate the opposite party's allegation against the petitioner in this respect. Moreover, as laid down in the above B. Mahadeva Rao's case : AIR1962Mad141 no presumption of the paternity of the child can arise in this case as there is absolutely no evidence to show that the opposite party was the exclusive kept mistress of the petitioner and their relationship was one of monogamy, though they were not legally married.

8. On the above discussion I am satisfied that the opposite party has not been able to discharge the burden on her to prove that the petitioner is the father of the said child. The opposite party, therefore, has utterly failed to establish beyond all reasonable doubt that the petitioner was responsible for her conception out of which her child, for whom maintenance is claimed, was born. As the opposite party has not been able to establish that fact, it is not necessary for me to examine if the petitioner has been able to disprove the allegations of the opposite party.

9. On the above discussion and consideration the opposite party is not entitled to get any sum from the petitioner by way of maintenance for the child born to her. On the above findings the impugned order of the Court, below cannot be maintained and as such is liable to be set aside.

In the result, therefore, the impugned order passed by the court below is set aside and the revision accordingly is allowed.

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