

SPECIAL BENCH (CIVIL).

Before U Thein Maung, Chief Justice, U San Maung and U Thaung Sein, JJ.

MRS. R. JOUBERT BWA (APPLICANT)

v.

MR. JOUBERT BWA (RESPONDENT).*

H.C.
1948

Mar. 17.

Divorce—Communication of venereal disease—Whether proof of both legal cruelty and adultery—Whether should be done knowingly, wilfully or recklessly—Condonation of offence—Subsequent adultery—Revival of offence

Held : That mere communication of venereal disease by husband to wife is *prima facie* sufficient evidence both of adultery and legal cruelty. Burden shifts to the husband to rebut the inference. It is not necessary that such communication should be done knowingly, wilfully or recklessly.

Edna Hardless v. Harold Richard Hardless, I.L.R. 55 All. 134 ; *Browning v. Browning*, L.R. (1911) (P.D.) 161, followed.

Communication of venereal disease may be condoned by wife ; but subsequent adultery has the effect of reviving the former cruelty which has been condoned.

Ma On v. Maung Aung Bwa, 14 B.L.R. 173, followed.

The following judgment of the Special Bench was delivered by

U THEIN MAUNG, C.J.—The fact that a husband has communicated venereal disease to his wife is in law sufficient evidence of adultery ; it also amounts to legal cruelty [see *Edna Hardless v. Harold Richard Hardless* (1)].

In order to establish a charge of legal cruelty against a husband for communicating a venereal disease to the wife, it is not necessary to allege or prove that he knowingly, wilfully or recklessly communicated the disease. It is sufficient for the wife to allege and to prove that she was infected by the husband with a

* Civil Reference No. 1 of 1948 of the High Court, Rangoon, being reference by the District Judge, Amherst, under s. 17 of the Burma Divorce Act for confirmation of the decree of dissolution of marriage.

(1) I.L.R. 55 All. 134.

venereal disease ; and the burden is upon him to prove that the disease was communicated in such circumstances as not to amount to legal cruelty [see *Browning v. Browning* (1)].

In this particular case, we are satisfied on the evidence that the husband not only committed adultery with prostitutes but also communicated venereal disease to his wife. It being common knowledge that this loathsome disease is highly contagious, it must be presumed that respondent recklessly or wilfully communicated the disease to his wife, and the husband has not given any evidence to rebut the presumption and prove that the disease was communicated in such circumstances as not to amount to legal cruelty.

The husband and the wife were married in 1937, and according to the wife, the disease was communicated to her first four months after the marriage. So, there may have been condonation. However, the wife has proved by the evidence of Maung On Sein, witness No. 4 for her, that the husband had committed adultery with prostitutes again about three months before the hearing of her application. This subsequent adultery has the effect of reviving the former cruelty which may have been condoned [see *Ma On v. Maung Aung Bwa* (2)].

The case was heard *ex parte* as against the husband, and he has not appeared in this Court to show cause as to why the decree *nisi* should not be made absolute. Besides, no one has intervened, and there is no reason to believe that there has been any collusion between the husband and wife.

The decree *nisi* is made absolute. There will be no order as to the costs in this Court, as neither party has appeared.

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(1) L.R. (1911) (P.D.) 161.

(2) 14 B.L.R.173.