

1952

Present : ROSE C.J.

PUNCHIAPPUHAMY, Appellant, and WIMALAWATHIE,
Respondent

S. C. 112—M. C. Kurunegala, 56,227

Maintenance Ordinance (Cap. 76)—Section 6—Illegitimate child—Equivocal acts—Corroborative value thereof.

Where, in an application for the maintenance of an illegitimate child, the acts relied upon as corroboration are equivocal, it is for the Magistrate to decide whether in the circumstances of the particular case such equivocal acts in fact corroborate the applicant's story.

APPPEAL from a judgment of the Magistrate's Court, Kurunegala.

H. V. Perera, Q.C., with *Austin Jayasuriya*, for the defendant appellant.

Vernon Wijetunge, for the applicant respondent.

Cur. adv. vult.

July 23, 1952. ROSE C.J.—

This appeal turns upon the question as to whether there was sufficient corroboration in law of the applicant's story that the appellant was the father of her child.

There is no doubt that the Magistrate disbelieved the story of the appellant *in toto*, but as Counsel for the appellant in my opinion rightly contends the question of corroboration should be considered apart from this fact.

The circumstances upon which the applicant relies as corroboration are as follows, (1) the payment of Rs. 125 by the appellant to a Tamil woman as a fee for her looking after the respondent's baby after the respondent's departure from hospital, (2) the fact that the respondent was taken by the appellant to Kegalle Hospital which was not the nearest hospital to the respondent's house, or *prima facie* the most appropriate for a confinement, (3) the prompt action taken by the appellant to rid himself of the baby as soon as the mother and the child were discharged from the hospital, (4) the absence of any attempt to trace the true father, (5) the fact that the appellant permitted the respondent to remain in his house, where his wife was already in residence, for an indefinite period.

The appellant seeks to discount these factors by reciting that the respondent was, in effect, an adopted daughter of his of some years standing; that she had originally come to the house when she was of tender years; that he had grown fond of her as indeed had his wife; and that his actions which might in normal circumstances be interpreted as

equivocal were due to charitable feelings towards the respondent as a result of their long association and her dependency upon him. (

Having regard to this background, learned Counsel for the appellant contends that the items of corroboration relied upon by the respondent in the present case should be subject to the comment of Lord Justice Atkin in *Thomas v. Jones*¹, where he says, "It may be that light may be thrown upon something which in itself is innocent and irrelevant, by some other circumstance which though not itself conclusive may yet be illuminating. But, apart from that, it appears to me impossible, when dealing with the question of corroboration, that the accumulation of pieces of evidence, each of which by itself is not admissible as corroborative evidence, can amount in the whole to corroboration. *Ex nihilo nihil fit.*"

It is to be noted in this passage that Lord Justice Atkin is referring to pieces of evidence each of which by itself is not admissible as corroborative evidence. That seems to me to be a very different thing from pieces of evidence which may or may not be regarded as corroboration by the Magistrate, according to the surrounding circumstances. In regard to these matters it must be borne in mind that the person to be satisfied as to whether or not a particular fact is corroborative of the petitioner's story is the Magistrate, and that in deciding whether or not he should be satisfied he should apply the test which is conveniently stated by Lord Justice Atkin at page 45 in the same case as follows, "It (corroborative evidence) must be evidence which tends to prove that the man is the father of the applicant's child. In other words it must be evidence implicating the man, evidence which makes it more probable than not that the respondent is the father of the child". In the light of that test and bearing in mind that it is the satisfaction of the learned Magistrate which is in question, I consider that it is not open to me to hold that the items of alleged corroboration which I have enumerated now cannot properly be considered to be corroborative evidence. It is no doubt true that each individual item—and indeed all the items taken collectively—is capable of explanation. But in my opinion it is for the learned Magistrate to decide whether the explanation offered is acceptable to him. If it is not, then in my view an appellant cannot be heard to complain that his explanation should or must have been accepted. Where in cases of this kind the acts relied upon as corroboration are equivocal—as I am prepared to concede is the case in the present matter—I consider that it is for the Magistrate to decide whether in the circumstances of the particular matter, including of course any explanation offered by the applicant, such equivocal acts in fact corroborate the applicant's story. I am certainly not prepared to hold that the items of corroboration relied upon for the present respondent are incapable of being regarded as corroborative evidence.

For these reasons the appeal must be dismissed with costs.

Appeal dismissed.

¹ (1921) 1 K. B. 22 at p. 48.