## KARUNANAYAKE

v.

## KARUNASIRI PERERA

SUPREME COURT.
SHARVANANDA, C.J., COLIN-THOMÉ, J. AND ATUKORALE, J.
S.C. APPEAL No. 7/84.
C.A. APPEAL No. 391/80.
M.C. BANDARAWELA 21875.
FEBRUARY 7, 1986.

*Maintenance – Illegitimate child – Corroboration – Corroborative value of falsehoods uttered by respondent.*

For a lie to be capable of amounting to corroboration firstly it must be deliberate, secondly it must relate to a material issue, thirdly the motive for the lie must be a realisation of guilt and a fear of the truth and not merely an attempt to bolster up a just cause or out of shame or a wish to conceal disgraceful behaviour from the family and fourthly the statement must be clearly shown to be a lie by evidence other than that of the person who is to be corroborated.

Neither the disbelief of the putative father's evidence where it contradicts that of the mother nor the fact of the former having knowingly made false statements would by themselves be capable in law of being corroborative of the mother's evidence. It is only when the false statements made by the alleged father are of such a nature and are made in such circumstances as to lead to an inference in support of the evidence that they can be regarded as corroborative evidence.

Cases referred to:

(1) *Tennekoon v. Tennekoon – 78 NLR 13.*
(2) *Vedin Singho v. Mency Nona – (1948) 51 NLR 209.*
(3) *Somapala v. Muriel Sirr – (1953) 55 NLR 247.*
(4) *Somasena v. Kusumawathie – (1958) 60 NLR 355.*

(5) *Dawson v. McKenzie – (1908) S.C. 648; 45 SLR 473.*
(6) *Warawita v. Jane Nona – (1954) 58 NLR 111.*
(7) *Kredland v. Knowler – 35 Cr. App. R. 48.*
(8) *Jones v. Thomas – [1934] 1 KB 323.*
(9) *R. v. Chapman and R. v. Baldwin – [1973] 2 WLR 876.*
(10) *R. v. Lucas – [1981] 2 All E.R. 1008.*

APPEAL from judgment of the Court of Appeal.

*R. K. W. Goonesekera* with *Manix Kanagaratnam* for the appellant.

*Ranjith Abeysuriya* with *Miss Mangalam Kanapathipillai* and *Atula Pathinayake* for the respondent.

*Cur. adv. vult.*

March 13, 1986.

ATUKORALE, J.

This is an appeal from a judgment of the Court of Appeal setting aside an order made by the Magistrate directing the respondent to pay maintenance for the appellant's illegitimate child born on 7.8.1978. It was the appellant's case that she commenced employment as a domestic servant in the respondent's household in early April, 1977. In October 1977 the mother of the respondent's wife fell sick and was warded in a hospital in Colombo. The respondent, his wife, their small children and she left for Colombo and stayed in the house of his wife's mother. The respondent's wife stayed over at the hospital for a few days to attend on her sick mother. On the very first day that she was thus away, the respondent returned home drunk in the night and had sexual intimacy with the appellant. In all the respondent had sexual intimacy with her on 3 consecutive nights. After their return home from Colombo, when the appellant informed the respondent that her menstrual period had stopped he told her not to be afraid and not to tell his wife as there would be quarrels or anyone else and that they would look after her if any trouble arose. She further stated in evidence that after the Sinhala New Year in April 1978 her sister came to see her as she had not gone home for the New Year. The sister having observed signs of pregnancy asked her whether there was any trouble. The appellant then divulged to her what had happened. The sister asked her whether she informed the respondent's wife. She replied that she had not, as the respondent had asked her not to do so. She further stated in evidence that her sister came to see her on two subsequent occasions. In July 1978 she informed the respondent's

wife that she was with child by the respondent and that she was unable to work any more and requested that she be taken home. The respondent and his wife quarrelled that day, damaged the furniture, put out the appellant with her clothes, locked up the house and went away. The appellant's sister who arrived a little later removed her to hospital where later on the child was born.

The appellant's sister, Somalatha, in her evidence stated that the appellant was employed as a domestic servant in the respondent's house. In April 1978 she went to see the appellant as she had not come home for the Sinhala New Year. On noticing the appellant's condition and questioning her, she told her what had happened and that she was pregnant by the respondent. She also told her that at the respondent's request she had not told anyone. The sister also stated in evidence that on her first visit the respondent was not at home and that the appellant asked her not to tell the wife as there would be quarrels at home. She went to see the appellant again in May 1978. On that occasion the respondent was at home and she told him that the appellant was expecting a child. The respondent asked her not to tell his wife or anyone else about it and that he will look after everything. On the third occasion she went to see the appellant in July. The appellant had been locked out of the house and was crying outside. The appellant told her that the respondent and his wife had quarrelled and locked up the house and gone away leaving her outside. She then took the appellant to hospital where later on the child was born. The evidence of the appellant and her sister was accepted by the Magistrate and was not sought to be challenged either in the Court of Appeal or before us.

The respondent gave evidence and stated that the appellant worked as a domestic servant in his house for only about 3 months from early April to about the end of July 1977. He denied that the appellant continued in employment thereafter or that he and his wife had ever gone to Colombo to see his wife's mother or that the latter was warded in hospital in Colombo or that the appellant or her sister (Somalatha) had ever spoken to him. He denied sexual intimacy with the appellant or that he was the father of the child born to the appellant. He, however, admitted that the appellant had filed a case in the Labour Tribunal, Badulla, for the recovery of arrears of salary for a period of 1 year. The Magistrate rejected the evidence of the respondent as being totally false, a finding which was not challenged in appeal.

The case thus stood in the following position. Upon the evidence of the appellant it has been established that the respondent is the father of the child. But having regard to the provisions of s.6 of the Maintenance Ordinance (Chap. 91, Vol. IV, L.E.) no order for maintenance of the child could be made against the respondent on the evidence of the appellant (the mother) unless the same is corroborated in some material particular by other evidence to the satisfaction of the Magistrate. The Magistrate concluded that the sister's evidence did not provide the requisite corroboration–a finding which was challenged before us by learned counsel for the appellant as amounting to a serious misdirection on the facts. He then proceeded to state as follows:

> "I accept the applicant's evidence. Because of that reason, the evidence of the respondent that when he went to Colombo his wife remained at home without staying in hospital is false. He gave that false evidence to show that there was no opportunity for him to have intercourse with the applicant. Due to that reason his false evidence is sufficient to corroborate the applicant's evidence in concluding that the applicant's child was begotten by the respondent. In this connection my attention was focussed on the case of *Tennekoon v. Tennekoon* (1) reported in 78 NLR 13. As reported in that maintenance case, it is clear that the false evidence of the respondent does not support the evidence of the applicant. However, the false evidence of the respondent abovenamed in this case is sufficient to establish the vital facts in the evidence given by the applicant in this application, that is, that the child pertaining to this maintenance application was begotten by the respondent."

On this basis the Magistrate ordered the respondent to pay the appellant a sum of Rs. 100 per month as maintenance for the child.

The respondent appealed from this order to the Court of Appeal which, whilst proceeding on the assumption that the appellant's evidence was not corroborated by that of her sister (as found by the Magistrate), considered the question whether false statements made by a defendant on oath in court could by themselves be capable of constituting corroborative evidence as required by s.6 of the Maintenance Ordinance. Relying mainly upon a passage from the judgment of Malcolm Perera, J. in *Tennekoon v. Tennekoon (supra)* the Court of Appeal concluded that as the appellant's evidence stood uncorroborated by the evidence of her sister–which was an

assumption based on the finding of the Magistrate–the falsity of the respondent's evidence by itself did not afford the requisite corroboration of the appellant's evidence. The Court of Appeal therefore set aside the order of the Magistrate.

The question whether lies uttered by a defendant in maintenance and seduction cases could be considered as corroborative of the evidence of the applicant or plaintiff has been the subject of several local decisions. In *Vedin Singho v. Mency Nona* (2) and in *Somapala v. Muriel Sirr* (3) there are dicta suggesting that any false denial by the defendant may be considered to afford some corroboration of the applicant's story. These two decisions and certain Scottish and English cases were considered by H. N. G. Fernando J. (as he then was) in *Somasena v. Kusumawathie* (4) and he took the view that except in the particular case of the defendant's false denial of the opportunity for sexual intimacy in the circumstances enumerated in the dictum of Lord Dunedin in *Dawson v. Mckenzie* (5) when the falsity of the denial may be regarded as corroborative of the evidence of the mother, there was no decision extending the principle stated by Lord Dunedin to other false denials. The dictum of Lord Dunedin is contained in the following passage of his judgment in *Dawson v. McKenzie (supra)*:

> "Now, the mistake which the learned sheriff has made here is in taking the mere proof of opportunity as amounting to corroboration. Mere opportunity alone does not amount to corroboration, but two things may be said about it. One is, that the opportunity may be of such a character as to bring in the element of suspicion. That is, that the circumstances and locality of the opportunity may be such as in themselves to amount to corroboration. The other is, that the opportunity may have a complexion put upon it by statements made by the defender which are proved to be false. It is not that a false statement made by the defender proves that the pursuer's statements are true, but it may give to a proved opportunity a different complexion from what it would have borne had no such false statement been made."

In *Warawita v. Jane Nona* (6) Sansoni, J. applied the above dictum of Lord Dunedin to the facts of the case before him. He held that the untruthful denial by the defendant of the existence of the opportunity for intimacy which was established by independent evidence did in the circumstances of that case remove any doubt that existed on the question of corroboration.

In *Tennekoon v. Tennekoon (supra)* referred to by the Magistrate in his order and in the judgment of the Court of Appeal, the defendant in his evidence denied paternity of the child. He denied that he ever visited the house of the child's mother or that he had ever spoken to her though they lived close to each other and were close relatives. He also denied that the parents of the mother of the child had ever met his parents to discuss the question of his marriage with the mother of the child. It was contended that these false statements of the defendant should be taken as corroborative of the evidence of the mother. Refuting the contention that false statements uttered by the defendant could always be taken as being corroborative of the applicant's evidence, Malcolm Perera, J. stated that the practical effect of doing so would be to dispense with corroboration altogether for the very fact that the defendant in his evidence denies that he is the father of the child would itself provide corroboration and any case put forward by him which is disbelieved may also be taken as being corroborative of the evidence of the mother. Relying on certain passages from the judgment of Lord Goddrard; C.J. in *Kredland v. Knowler* (7) and of Lord Hewart, C. J. in *Jones v. Thomas* (8) he held that the question whether the false statements of the defendant would amount to corroboration depends on the facts and circumstances of each case. After examining the nature of the false statements made by the defendant in that case, Malcolm Perera, J. held that–

> "they are of such a nature and made under such circumstances as to erase any doubt that may have existed in my mind on the question of corroborative evidence."

Neither the disbelief of the putative father's evidence where it contradicts that of the mother nor the fact of the former having knowingly made false statements would by themselves be capable in law of being corroborative of the mother's evidence. As pointed out by Lord Hewart, C. J. in the case of *Jones v. Thomas (supra)* it is only when the false statements made by the alleged father are of such a nature and are made in such circumstances as to lead to an inference in support of the evidence of the mother that they can be regarded as being corroborative evidence. In *R. v. Chapman and R. v. Baldwin* (9), it was sought to draw in principle a distinction between a lie told by a defendant or an accused out of court and one uttered by him in court in the witness box. Whilst the former was stated to be affirmative proof of the untruth of his denial of guilt which may in turn tend to confirm the evidence against him, an untruthful statement in court, it

was said, is not positive proof of anything but would only lead to a rejection of the evidence given by him. This suggested distinction has, however, been rejected in *R. v. Lucas* (10) which contains the most recent judicial pronouncement in England on the question of corroboration. One of the questions that arose for determination in that criminal case was whether the trial judge gave the correct direction to the jury on the question as to when statements made by the defendant, which are not shown to be lies by evidence other than that of the accomplice who was sought to be corroborated, could be regarded as capable of affording corroboration of the accomplice's evidence. The direction given by the trial judge to the jury in that case was to the effect that if the jury accepted the evidence of the accomplice and rejected that of the defendant and accordingly came to the conclusion that the defendant must have been lying to them, then that fact of itself could be treated by the jury as corroboration of the accomplice's evidence. This direction was held by court to be erroneous for the reason that the lies told by the defendant were not shown to be lies by evidence other than that of the accomplice who was to be corroborated. In the course of his judgment Lord Lane, C. J. stated:

"There is, without doubt, some confusion in the authorities as to the extent to which lies may in some circumstances provide corroboration and it was this confusion which probably and understandably led the judge astray in the present case. In our judgment the position is as follows. Statements made out of court, for example statements to the police, which are proved or admitted to be false may in certain circumstances amount to corroboration..... It accords with good sense that a lie told by the defendant about a material issue may show that the liar knew that if he told the truth he would be sealing his fate..... To be capable of amounting to corroboration the lie told out of court must first of all be deliberate. Secondly it must relate to a material issue. Thirdly the motive for the lie must be a realisation of guilt and a fear of the truth. The jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family. Fourthly the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent witness.

As a matter of good sense it is difficult to see why, subject to the same safeguard, lies proved to have been told in court by a defendant should not equally be capable of providing corroboration. In other common law jurisdictions they are so treated: *see* the cases collated by Professor J. J. Heydon (1973) 89 LQR at 561 and cited with apparent approval in Cross on Evidence (5th Ed., 1979, p.210)."

Cross on Evidence (6th Ed., 1985, p.230) states that these principles are not limited to criminal cases but will also apply to other situations in which corroboration is required such as affiliation proceedings.

Under s. 4 of the English Affiliation Proceedings Act of 1957, as amended by the Affiliation Proceedings (Amendment) Act of 1972, the court shall not adjudge the defendant to be the putative father of the child upon the evidence of the mother unless her evidence is corroborated in some material particular by other evidence to the satisfaction of court. Under s.6 of our Maintenance Ordinance no order for maintenance shall be made on the evidence of the mother of an illegitimate child unless corroborated in some material particular by other evidence to the satisfaction of the Magistrate. In the two enactments the provision relating to corroboration is the same. In cases (including maintenance and seduction cases) in which the rather vexed question of corroboration has arisen for consideration, our courts have had recourse to and derived assistance from English decisions. With respect, it seems to me that the tests which should be applied in determining whether a lie told by a defendant or an accused, whether in or outside court, is capable of constituting corroboration or not have been correctly set out by Lord Lane, C.J. in the passage from his judgment quoted by me above. Under the circumstances I think we should adopt and apply the criteria formulated by him to local cases, both civil and criminal, in which the question arises for consideration.

In the instant case the Magistrate has held that the evidence of the sister, Somalatha, whom he has believed, does not corroborate the appellant's evidence but that the falsity of the respondent's evidence relating to the opportunity he had of sexual intimacy with the appellant in Colombo, which was established by the evidence of the appellant alone, is itself sufficient to afford the requisite corroboration. On an examination of the authorities referred to above and the principles laid down therein the Magistrate was clearly wrong in holding that the

falsity of the respondent's evidence by itself was capable of providing the requisite corroboration. The Court of Appeal, proceeding as it did on the assumption that the sister's evidence in fact was not corroborative of the appellant's evidence, was therefore correct in holding that the appellant's case must fail for the reason that there was no independent testimony to establish the falsity of the respondent's evidence regarding the opportunity he had for sexual intimacy with the appellant. However it was the contention of learned counsel for the appellant before us that the Magistrate misdirected himself in holding that the sister's evidence did not corroborate the appellant's version. He submitted that there was evidence given by the sister from which it could reasonably be inferred that the evidence of the respondent that the appellant ceased to be in his employment in July 1977 and that therefore he had no opportunity for sexual intimacy at or about the time that conception was likely to have occurred was false. He submitted that the sister's evidence had not been closely examined by the Magistrate as a result of which the Magistrate had seriously misdirected himself on this point.

On a careful perusal of the evidence of the appellant's sister I am of the opinion that this contention of learned counsel for the appellant is entitled to succeed. The sister in her evidence stated that she was aware that the appellant was employed in the respondent's house and that twice (in August and September 1977) she saw the appellant being brought to her home by the respondent in his jeep and taken back. She also stated that she first went to see the appellant at the respondent's house in April 1978 as the appellant did not come home for the Sinhala New Year. According to her she also went to see the appellant on two more occasions, namely in May and July 1978, on the last of which she found the appellant locked out of the house with her clothes. She thereupon removed the appellant to hospital where the child was born. This evidence of the sister corroborates that of the appellant both in regard to the period as well as the date of termination of the services of the appellant under the respondent. The falsity of the respondent's statement in the witness box that the appellant did not work as a domestic servant in his house after July 1977 is thus established by the independent testimony of the sister. The respondent's lie is one that has been uttered by him deliberately on a very material issue with a view no doubt of concealing his guilt. In the circumstances of this case I am of the view that the lie told by the respondent satisfies the four criteria laid down by Lord Lane, C.J. in *R.*

*v. Lucas (supra)* and does amount to corroboration of the appellant's evidence as required by s. 6 of the Maintenance Ordinance. There is also, in my view, another item of evidence in the case which appears to be decisively in favour of the appellant. The sister, whose evidence has been accepted by the Magistrate, stated that on the second occasion she went to see the appellant at the respondent's house in May 1978, she met the respondent and told him that the appellant was expecting a child. The respondent then told her not to tell it to his wife or anyone else and that he will look after everything. This item of evidence provides very strong corroborative evidence of the appellant's story and in fact amounts to a virtual admission by the respondent that he was responsible for the appellant's pregnant condition.

Accordingly I allow the appeal and set aside the judgment of the Court of Appeal. The Magistrate's finding that the respondent is the father of the child and his order awarding the appellant a sum of Rs. 100 per month as maintenance for the child will stand. The appellant will also be entitled to a sum of Rs. 1,050 as costs of this appeal.

SHARVANANDA, C. J. – I agree.

COLIN-THOMÉ – I agree.

*Appeal allowed.*