

1954

Present: Sansoni, J.

J. K. WARAWITA, Appellant, and JANE NONA, Respondent

*S. C. 1,563—A. M. C. Colombo, 20,040**Maintenance—Illegitimate child—False statements made by defendant—Corroborative evidence.*

In an application for maintenance in respect of an illegitimate child, evidence of mere opportunity for intimacy between the mother and the defendant does not amount to corroboration, but a false statement made by the defendant denying such opportunity may remove a doubt that may exist on the question of corroborative evidence.

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

H. V. Perera, Q. C., for the defendant-appellant.

No appearance for the applicant-respondent.

Cur. adv. vult.

November 2, 1954. SANSONI, J.—

This is an appeal by the defendant against an order which condemned him to pay maintenance for four illegitimate children born to the applicant. The applicant's case briefly was that she had worked for some

time as a domestic servant for the defendant and his family in the latter's house in Ambalangoda till 1938, after which she went to live in a house on a land of 10 acres belonging to him at Porowagama. She said that she was placed in charge of that land by the defendant and while she was there he often visited her and even stayed with her in that house; she claimed to have been his mistress for some years. About 1947, according to her, one Sadiris came to live in that house at the instance of the defendant, and she and Sadiris then lived there as man and wife till 1951 and she had three children by Sadiris before they were turned out of the land by the defendant. In 1953 she instituted these proceedings asking for maintenance for four children aged 12, 10, 8 and 5 years respectively who she said were the defendant's children. The applicant produced a postcard of 1950 and a letter of 1941 said to have been received by her from the defendant: they contain instructions regarding the working of the land, such as would normally be sent by an estate owner to one in charge of his estate. I shall have to refer again to these documents.

The defendant's position was that the applicant first came to work on his land in 1945 together with Sadiris, and that she did so because her elder sister and brother-in-law were already there from 1941. He first said that he used to write to the applicant's sister but not to the applicant, but he later changed his story by saying that he wrote the postcard of 1950 to the applicant and the letter of 1941 to her sister. I should add that the person addressed in both writings is Jane. He denied that the applicant had ever been his mistress.

In order to corroborate her evidence the applicant called a witness Parlis who lived about 9 miles away from that land. Parlis said that the defendant brought the applicant to live on that land from his house in Ambalangoda, that she was living alone on the land and was frequently visited by the defendant, and that she had four children by him. He also said that the defendant once told him that he would board and educate these children. According to Parlis, Sadiris was brought by the defendant to live on the land some time after the applicant had come there.

The learned Magistrate held that the defendant was the father of the four children in question, and that he had been maintaining them from their birth until 1951. He clearly preferred to believe the applicant and Parlis rather than the defendant. It was submitted for the defendant that the evidence of the applicant as to paternity had not been corroborated, but I think that the evidence of Parlis affords some corroboration though not perhaps of a very weighty nature. I agree that as the defendant was the owner of the land on which the applicant was living he could well have visited the land frequently, given instructions to applicant as to its working, and treated her and her children generously, consistently with his position as owner. This case should not lead estate owners in general to feel that if they adopt a generous attitude towards their employees, and pay regular visits to their lands, they would find themselves in the same position as the defendant.

But there is an aspect of the evidence given by the defendant, as compared with that given by the applicant, which seems to me to be decisively in the applicant's favour. It is clear that the defendant was not speaking the truth when he said that the applicant came to live on this land only in 1945, that it was to the applicant's sister and not to the applicant that he sent the written instructions regarding the working of the land in 1941, and that the applicant was known as Caroline and came to be known only later as Jane. In themselves these details were not very important, and if the defendant had spoken the truth in regard to them it might have been difficult to say that the relationship between him and the applicant was anything more than that of an employer and employee. Parlis' evidence might then have been of a merely equivocal nature and it might well have been argued that the evidence established only the mere opportunity for intimacy. The situation is different when it becomes clear that the defendant has been lying on these matters. He has attempted to disclaim any knowledge of the applicant prior to 1945, obviously in order to render it impossible for him to be the father of the two elder children, and highly improbable that he is the father of the two younger children.

It is in such a situation that the dictum of Lord Dunedin in *Dawson v. Mckensie*¹, quoted by Lawrence, J., in *Jones v. Thomas*², serves as a valuable guide, for he said: "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 defendant 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". Lord Hewart, L.C.J., in *Jones v. Thomas* (*supra*) said: "As I read those dicta it is only when the untrue statements are of such a nature, and made in such circumstances, as to lead to an inference in support of the evidence of the mother that they can be regarded as corroborative evidence, and not that the mere fact of the alleged father having knowingly made false statements is in itself corroboration within the statute". More recently Lord Goddard, L.C.J., in *Credland v Knowler*³ quoted these dicta and said: "In other words one has to look at the whole circumstances of the case. What may afford corroboration in one case may not in another. It depends on the nature of the rest of the evidence and the nature of the lie that was told". In this case the learned Magistrate was satisfied that the applicant's evidence was corroborated, and to quote Lord Goddard again: "What this Court has to decide is whether or not there was evidence which could corroborate the evidence of (the applicant) because, if there was such evidence, it was for the appeal committee to decide whether they regarded it as corroboration. That is always

¹ (1908) S. C. 618.

² (1931) 1 K. B. 323.

³ 35 Criminal Appeal Reports 48.

the position when an appeal is brought on the question of corroboration, whether in a case tried before a jury or by justices. It is not for this Court to say whether the tribunal of fact ought to be satisfied. We have to decide whether the evidence given is such as in law can be regarded as corroboration ; and it is for the tribunal of fact, the jury or justices, whichever it may be, to decide for themselves whether it did corroborate ”.

Applying these principles, I think the false statements made by the defendant remove any doubt that may have existed on the question of corroborative evidence, and I dismiss this appeal.

Appeal dismissed.

