1943

Present : **de Kretser J.**

NAVARATNAM, Appellant, *and* UPPIN MUDALALI, Respondent.

71—M. C. Kandy, 4,726

Maintenance—Corroboration supplied by defendant's conduct—Evidence of maintenance to stop time running.

In an application for maintenance conduct pointing to the probability of the defendant being the father of the child is sufficient corroboration.

Where, on a question, whether the application was made in time, it is alleged that the defendant had given money for maintenance,—

***Held*, that corroboration was not necessary on the point.**

APPEAL from an order of the Magistrate of Kandy.

E. F. N. Gratiaen (with him *I. Misso*), for appellant.

H. V. Perera, K.C. (with him *H. W. Jayewardene*) for respondent.

March 23, 1943. DE KRETSER J.—

This is a maintenance case. Two points arise for determination, viz., (*a*) the paternity of the child ; (*b*) whether the application had been made within time.

The learned Magistrate decided (*a*) in favour of the applicant but (*b*) against her, and she appealed. When the case first came up before me I decided to give the defendant an opportunity of calling evidence as it was not then clear whether he had been taken by surprise or not by the applicant's assertion that he had supported her during his absence in India through one Nair, who was a trusted employee of long standing in the firm of which the defendant was a junior partner. The defendant did not take any steps to procure Nair's attendance or to produce the books of the firm and the case came back for instructions, whereupon I gave him a time limit within which to call the evidence, and the evidence was then recorded. It is now clear that defendant knew that Nair's evidence might be of material assistance, for he had put Nair on his list of witnesses and Nair had been in attendance. Nair denied the applicant's allegation and also produced books covering only the period of defendant's absence in India. He was disbelieved, and the Magistrate came to the conclusion that Nair had supplied provisions to the applicant and had done so on the defendant's instructions. The Magistrate had been instructed to reconsider the question of paternity on which respondent had contested his finding but he did not alter his opinion. The case was then sent back and was further argued.

There can be no doubt but that there are contradictions in the evidence of the applicant and her mother, who corroborated her, but the Magistrate had those contradictions before him when he decided in the applicant's favour in no uncertain terms. The applicant and her mother appear to be illiterate and unintelligent persons, the applicant being only 16 years old, and they made very good subjects for cross-examination. I have

given the evidence my careful consideration and on the recorded evidence it is possible to arrive at a conclusion adverse to the applicant, but I find it difficult to say the Magistrate arrived at a wrong conclusion. There are many indications that her evidence is true.

The defendant's explanation is that the applicant was set up by one Latiff with whom he fell out in 1940. The applicant had cited Sundarasekere but it was defendant who called him. He contradicted her as to the person who had engaged his house but stated that on seeing her condition he had asked who the father was and she had replied, "The modalali". In re-examination he said there were many modalalis in Kadugannawa but still he did not inquire further. Quite clearly he must have known to whom the reference was, more especially as the applicant had been living just behind the shop of the defendant. This evidence means that in 1939 she had given the mudalali as the father of her child, and goes against the defendant's evidence that this was a false case instigated by Latiff with whom he had fallen out in 1940. If another modalali were the father he would be good enough for the applicant to sue. It was urged that no neighbours had been called but defendant had cited two of them and had not called them. There are other points too and it is impossible to say the Magistrate, who saw the witnesses, was wrong in his conclusions.

Once we get that result, there is ample corroboration of her story in the evidence given by her mother. There is a further piece of corroboration. The Magistrate had not disbelieved her when she stated that Nair had supplied her with provisions but he thought there was no evidence that he did so at defendant's instance. Here he had lost sight of the circumstantial evidence in the case rendering it likely that, if Nair did supply provisions, he did so not of his own volition but at defendant's instance, he being anxious to avoid an immediate scandal. When Nair did give evidence, after the pinch of the case had been known, he denied her allegation and the Magistrate disbelieved him. Nair stated that if it were known that he had arranged the union, not only defendant but he also would be in trouble. He had been in the firm for about 20 years and was drawing a salary of Rs. 90 a month. He had a mistress to whom he supplied provisions but this did not appear in the books, and he said that if defendant paid in cash like any other customer, then nothing would appear in the books.

On the matter of payment to stop time running no corroboration is needed. That is the law in England too, where similar provisions exist, *vide Halsbury* on Bastardy.

It is impossible on this point too to say the Magistrate was wrong, and it follows that if defendant did provide her with provisions it would be an indication that he was the father of the child.

Now, corroboration need not be of any special nature. The need for corroboration arises in most cases bringing in the sexual element, and in a case of rape our Court of Criminal Appeal held in *Rex v. Marthelis*[1] that the rule laid down in *Rex v. Baskerville*[2] applied and that the corroboration required was corroboration "which shows *or tends to show* that the story of the accomplice that the accused committed the crime is

[3] *(1916) 2 K.B.D. 658.*

true, not merely that the crime had been committed but that it was committed by the accused." In the present case we have direct evidence from the mother and further evidence from the fact of Nair's having supplied the applicant with provisions. *Halsbury,* in dealing with an exactly similar provision in England, cites cases. In *Reffell v. Morton*[1] any conduct pointing to the probability of the defendant being the father was held to be sufficient corroboration.

The Magistrate suggests that defendant be ordered to pay Rs. 30 a month. He has been influenced by defendant's means and has not considered the status of the applicant and the age of the child. I think that Rs. 15 a month would be sufficient. The appeal is allowed, and defendant is ordered to pay Rs. 15 a month from the date of the first ordered by the Magistrate. The applicant is entitled to her costs.

Appeal allowed.

[1] *(1906) 70 J.P. 347.*