

1948

Present : Basnayake J.

WIJERATNE, Appellant, and KUSUMAWATHIE, Respondent.

*S. C. 65—M. C. Kandy, 29,552.**Maintenance—Corroboration of applicant—Nature of evidence required—Satisfaction of Magistrate—Section 6, Chapter 75.*

The corroboration required by section 6 of the Maintenance Ordinance is corroboration to the satisfaction of the Magistrate. Where, therefore, there is evidence which, if believed, supports the Magistrate's conclusion that the mother of the child is corroborated in some material particular the Supreme Court should not on a reading of the depositions interfere on the mere question of the degree of corroboration.

APPPEAL from a judgment of the Magistrate, Kandy.

F. A. Hayley, K.C., with *Peri Sunderam*, for the defendant, appellant.

No appearance for the applicant, respondent.

Cur. adv. vult.

April 5, 1948. BASNAYAKE J.—

The defendant appellant appeals from an order under section 2 of the Maintenance Ordinance to pay a sum of Rs. 3 per mensem to the applicant for the maintenance of his illegitimate child. The question arising for decision on this appeal is whether the evidence of the applicant who is the mother of the child is corroborated in some material particular by other evidence to the satisfaction of the Magistrate.

The applicant and the defendant are first cousins and the latter used to visit the house of the former. An uncle of the defendant, one Lewis, says that he detected the applicant and the defendant sleeping together one night in a dark room in the applicant's house

when all the other inmates were away and that he marked his disapprobation by slapping them both. This detection was made during the period the applicant says the defendant was on terms of sexual intimacy. About one and a half months after this the applicant was taken to the doctor and was found to be pregnant. The applicant's brother Babanis says that he knew that the defendant and the applicant were on terms of sexual intimacy and that he forbade the defendant to come to their house. Babanis says that the defendant vented his displeasure over this by stabbing him sometime later in the course of a quarrel with his father. The learned Magistrate is satisfied that the evidence sufficiently corroborates the evidence of the mother as to paternity of the child.

It has been held by this Court in the case of *Angohamy v. Babasinno*¹ that the corroboration which the section contemplates should consist of some evidence, oral or real, entirely independent of that of the applicant which renders it probable that her story as to the paternity of the child in respect of whom she is applying for maintenance is true. The corroboration need not relate to the actual act of connexion which produced the conception. It is sufficient if it relates to the sexual intimacy between the applicant and the defendant—*Ponnammah v. Seenitamby*².

In this case there is evidence which, if believed, corroborates the applicant's evidence as to the paternity of the child and I am not disposed to interfere with the conclusion of the learned Magistrate on this matter even if I were inclined to take a different view of the evidence. In considering in appeal the question of corroboration under section 6 of the Maintenance Ordinance, I think this Court should give due weight to the words "to the satisfaction of the Magistrate" therein. These words in my view require that, if there is evidence which if believed supports the Magistrate's conclusion that the mother of the child is corroborated in some material particular, this Court should not on a reading of the depositions interfere on the mere question of the degree of corroboration. Shaw J. in the case of *Sinaval v. Nagappa*³ makes certain observations as to how this Court should approach the consideration of a case under the Maintenance Ordinance. As I have referred to that case it may be expedient to note the following passage from the judgment. "The Magistrate has come to the conclusion on the evidence that the parties did not go through a ceremony of marriage and had, in fact, never lived together at all either as husband and wife or as man and mistress. I confess that I have felt some difficulty on the finding of fact. The evidence as recorded would appear to me to more strongly support the case of the applicant than that for the defendant, and were I deciding this case unbiassed by the finding of the Magistrate and upon the recorded depositions, I should probably find in favour of the applicant. But that is not sufficient to enable me to reverse the Magistrate's finding. Maintenance cases are in the nature of civil proceedings, and the Court of Appeal, although sitting by way of

¹ (1910) 4 *Weerakoon* 60.

² (1921) 22 *N. L. R.* 395.

³ (1916) 6 *Balasingham's Notes of Cases* 26.

rehearing, ought to give very great weight to the finding of fact of the Magistrate who has seen the witnesses, and ought not to reverse his decision on a question of fact, unless it is clear from the evidence or from some undisputed fact that he has gone wrong."

Although these words were expressed not with reference to any special provision of the Maintenance Ordinance they apply even with greater force to that portion of section 6 which requires corroboration of the evidence of the mother of an illegitimate child.

The appeal is dismissed.

Appeal dismissed.

