

1946

Present: Cannon J.

BENEDICT PERERA, Appellant, and SIRIWARDENE  
(S. I. Police), Respondent.

1,435—M. C. Colombo, 18,741.

*Incest—Evidence of corroboration—Validity of conviction in the absence of such corroboration—Duty of Court to consider question of corroboration—Evidence Ordinance, s. 133—Jurisdiction of Magistrate's Court to try case of incest—Marriage Registration Ordinance (Cap. 95), s. 16—Criminal Procedure Code, s. 11 (b).*

Where, in a prosecution for incest, the Magistrate gave no reasons for convicting the accused in the absence of corroboration, nor any indication that he had considered that aspect of the case—

*Held*, that the conviction should be quashed.

*Held, further*, that the offence being one punishable with imprisonment for a term exceeding six months, a Magistrate had no jurisdiction to try the case.

**A** PPEAL against a conviction from the Magistrate's Court, Colombo.

*Frederick W. Obeyesekere*, for the accused, appellant.

*F. B. P. Jayasuriya, C.C.*, for the Attorney-General.

December 6, 1946. CANNON J.—

The appellant was convicted of incest with the daughter of his half-sister and sentenced to 6 months' imprisonment. The complainant is a girl aged 14 and there was no corroboration tendered of her evidence. She said that the prisoner gave her as a reward small sums of money with which she bought ice-cream and although the date of the offence was charged as "on or about May 25, 1946", she was allowed to give evidence that incestuous relations had been carried on for about two years.

There are two main grounds of appeal, namely, that the Magistrate has not considered the question of corroboration and that he had no

jurisdiction to try the case. The Magistrate gave as his reasons for convicting, the following:—

I am satisfied that the girl Edna is speaking the truth when she states she was ravished by accused and that the accused did have intercourse with her on or about May 25, 1946, too. She complained to her sister. At least when her sister found she had come there weeping, she questioned her and got the story from her. The letter P1 was written by the elder sister to her mother. The witness Claribel, too, is clearly speaking the truth and she can have no ulterior motive in bringing this matter to Court.

Claribel's evidence embraced a complaint which the girl made to her. This could not be regarded as corroboration of the girl's evidence; and the letter P1 was irrelevant to the issue and, therefore, inadmissible against the appellant. The rule of evidence as to accomplices does not appear to have been considered by the Magistrate. On that question and the relevance of "complaints" in sexual cases, Keuneman J. states the law in 41 N. L. R. at pp. 367 and 368—

In the language of Lord Hewart C.J. in *Rex v. Lowell* such complaints are "not evidence of the facts complained of" but are merely "matters which may be taken into account . . . in considering the consistency and therefore the credibility of the story" . . . . But in the case of an accomplice, the rule of practice requires something more than the mere testing of his story. In the language of Lord Reading in *Rex v. Baskerville*, there "must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him—that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it" . . . . Under section 133 of the Evidence Ordinance, a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. But, it is necessary that the Magistrate should have clearly before his mind the fact that he is dealing with the evidence of an accomplice, and he must give clear and satisfactory reasons for convicting in the absence of corroboration.

In this case the Magistrate gives no reasons for convicting the accused in the absence of corroboration, nor any indication that he has considered that aspect of the case.

As regards jurisdiction, section 16 of the Marriages Ordinance, Chapter 95, under which the appellant was charged, makes the punishment for the offence a maximum of one year's imprisonment. But section 11 (b) of the Criminal Procedure Code excludes from the Magistrate's general jurisdiction offences which are punishable with imprisonment for a term which may exceed six months or with a fine which may exceed one hundred rupees. The Magistrate, therefore, clearly had no jurisdiction to try this case and the trial is a nullity.

For these reasons the conviction must be quashed and the case sent back for preliminary inquiry by another Magistrate.

*Conviction quashed.*