

1926.

Present : Jayewardene A.J.

BANDARA MENIKA v. DINGIRI BANDA.

775—*P. C. Kandy, 15,917.*

Maintenance—Corroboration of mother's evidence—Circumstantial evidence.

In an application for maintenance the corroboration of the mother's evidence may be supplied by circumstantial evidence.

Where the applicant produced a document left in her possession, which was identified as belonging to the respondent,—

Held, that the production of the document amounted to a sufficient corroboration of her evidence.

A PPEAL from an order of the Police Magistrate of Kandy dismissing an application for maintenance in respect of two illegitimate children. The Magistrate, while believing the case to be a true one, dismissed the application on the ground that the mother's testimony was not corroborated in material particulars by other evidence.

No appearance for applicant.

Soertsz, for defendant, respondent.

January 21, 1926. JAYEWARDENE A.J.—

This is an application for maintenance in respect of two illegitimate children. The respondent denied paternity. The learned Police Magistrate in a very careful judgment has held that, although he believes the case to be a true one, yet as the mother's testimony is not corroborated in material particulars by other evidence, the application must be dismissed. I fully appreciate the Magistrate's difficulty which appears from the analysis to which he has subjected the evidence. There was no appearance for the applicant in appeal, but I have considered the case and I have come to the conclusion that there is sufficient corroboration of the mother's evidence to justify an order in her favour. In the first place, the Arachchi of the village says that he has seen the respondent in the applicant's house. In the second place, the applicant produces a document which is marked "M." It is an informal writing on which the respondent took on rent a seven-cubit house at Rs. 1·50 a month from one Mudiyanse. She says that the respondent left it in her house, where, according to the evidence, the parties cohabited. The respondent says that he does not know in whose writing "M"

is, and denies that it was given to him by Mudiyanse, the owner of the house. He produces a document "N" which he says is the lease. This is signed by the respondent. But in my opinion "M" and "N" are counterparts of the informal lease, "M," signed by the landlord and given to the tenant (the respondent), and "N" signed by the tenant (the respondent) and given to the landlord. The respondent must have obtained "N" from Mudiyanse, in whose possession, I have no doubt, it was. As the Magistrate observes, both "M" and "N" bear the same date, are witnessed by the same witnesses, and written by the same hand. Further, they are written on the same kind of paper, and all considerations point to their execution at or about the same time; but the learned Judge is not satisfied as to how it came into the applicant's hands. There might have been room for doubt on this point, if the respondent had admitted the genuineness of the document "M" and suggested that it had been obtained by the applicant in some surreptitious manner, but his denials with regard to it compel me to accept the account given by the applicant, that is, that it was left in her house by the respondent, who was visiting her there. Her evidence on other points has been accepted, and there is no reason for rejecting her evidence on this point. The two facts I have mentioned afford ample corroboration of a circumstantial nature of the mother's evidence. Corroborative evidence need not be direct—it is rarely direct in cases of this kind—it may be circumstantial. It has been held in England where, as under our Ordinance, no order for maintenance under the Bastardy Acts can be made, unless "the evidence of the mother be corroborated in some material particular by other evidence," that the tests applicable to determine the nature and extent of corroboration in the case of accomplices are equally applicable to cases under the Bastardy Laws and to all other cases in which corroboration is required by Statute: *Thomas v. Jones*,¹ where Bankes L.J. after quoting the passage from the judgment of Lord Reading C.J. in *Rex v. Baskerville*² reproduced in the local case of *The King v. Perera*,³ said:—

"I think, with the necessary alterations to fit that language to this particular Statute (Bastardy Laws Amendment Act, 1872), it is entirely applicable to a case like the present, and I would only add my emphatic agreement with what the Lord Chief Justice said, that it would be in high degree dangerous to attempt to formulate the kind of evidence which should be regarded as corroboration, or to attempt any general definition of what constitutes corroborative evidence" (p. 33):

¹ (1921) 1 K. B. 22.

² (1916) 2 K. B. 653.

³ (1923) 25 N. L. R. 148.

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and Atkin L.J. said :—

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“ What is meant by corroborative evidence is established now by the decision in *Rex v. Baskerville (supra)* which I think must be treated as an authority generally upon the meaning of corroborative evidence. It must be evidence which tends to prove that the man is the father of the complainant's child ; in other words, it must be evidence implicating the man, evidence which makes it more probable than not that the respondent to the summons is the father of the child ” (p. 44).

There is also the statement made by the applicant to Ukku Banda Arachchi (Y) that she was pregnant to the respondent. This was made shortly before the second child was born. According to the applicant's evidence this statement was made whilst the intimacy was still continuing. If so, it would also amount to corroboration of her own evidence under section 157 of the Evidence Ordinance (*Ponnamah v. Sinnatamby*¹). As the statement was in the nature of a complaint, it is quite possible that the parties were at arm's length when it was made, and it would be safer to exclude it from consideration. Then there is the direct evidence of some neighbours, whose evidence, although it strongly corroborates the applicant's evidence, has not been relied on by the Magistrate on the general ground that it cannot be trusted on its merits. If it had become necessary, I should have been prepared to consider whether their evidence should not be accepted as sufficient corroboration. In view of what I have said above, it is, however, unnecessary to discuss that evidence.

I would, therefore, hold that the mother's evidence has been corroborated, and that she has established the fact that the respondent is the father of her two children. As regards the elder child, who is five years of age, the applicant had also to prove that that child had been maintained within twelve months of its birth. The applicant says the child has been so maintained. Her evidence on this point need not be corroborated. But as the respondent has been found to be the father of the second child, who is only a few months old, it is not difficult to infer that he must have maintained the first child till his separation from the mother.

I hold, therefore, that the applicant has established the respondent's liability to maintain both the children. The appeal is allowed, and the case will go back for the Police Magistrate to fix the amount of maintenance to be paid by the respondent in respect of each child.

I would also allow the applicant Rs. 10·50 as costs of these proceedings.

Appeal allowed.