

1953

Present : Rose C.J. and Swan J.

D. D. SOMAPALA, Appellant, *and* MURIEL SIRR,
Respondent

S. C. 56—D. C. Colombo, 21,681

Seduction—Corroborative evidence.

In an action for damages for seduction, a false denial by the defendant of more than the barest acquaintance with the plaintiff at the material time may properly be considered to lend some corroboration to the woman's story.

APPPEAL from a judgment of the District Court, Colombo.

H. V. Perera, Q.C.², with N. M. de Silva, for the defendant appellant.

H. W. Jayewardene, with D. R. P. Goonetilleke, for the plaintiff respondent.

Cur. adv. vult.

¹ (1904) *A. C.* 423 at 428.

September 30, 1953. ROSE C.J.—

This is an appeal from a judgment of the District Court, Colombo, entering judgment in favour of the plaintiff for Rs. 2,000 and costs in respect of an action for damages for alleged seduction.

The case for the plaintiff, briefly stated, is that the plaintiff and the defendant, who were neighbours, became acquainted with each other, that the acquaintance ripened to affection and that upon the night of 8th May, 1949, the plaintiff, who was a virgin at the time, was seduced by the defendant. The plaintiff kept the episode from her parents until she herself was aware of her pregnancy and until her parents discovered her condition. There is evidence, which the learned District Judge apparently accepted, that subsequent to the discovery of the plaintiff's condition, conversations took place between the defendant and the plaintiff's parents which resulted in the defendant promising to marry the plaintiff in due course. Later, the question of finance was discussed and the defendant apparently being dissatisfied with the provision that was proposed to be made by the plaintiff's parents, withdrew from the arrangement.

The principal point taken by the appellant was that there was no substantial corroboration of the plaintiff's story of the seduction. Moreover, it was further contended that the contradictions in the story told by the plaintiff and by her principal witnesses were of such a nature that the learned Judge should have rejected the plaintiff's version of the facts.

The principal item of corroboration relied upon was the discovery of the plaintiff and the defendant in a compromising position by the invalid elder sister of the plaintiff. It appears that the 8th of May was the final day of a two weeks Pirith Pinkama in the village temple. The 8th May was the "Dorakadasna" night, on which the practice evidently is for almost all the people in the village to gather at the temple. In fact, the plaintiff's parents went to the temple at about 7.30 p.m. and did not return to their house until late at night; the suggestion of the plaintiff, of course, being that the defendant was aware that the plaintiff would be alone in the house, apart from her invalid sister. According to the evidence of the sister, she rebuked the defendant for being in the house alone with the plaintiff so late at night, and thereupon the defendant left. Moreover, the subsequent conduct of the defendant, as depicted by the plaintiff's witnesses, would tend to corroborate her (the plaintiff's) story of the seduction.

Counsel for the appellant has drawn our attention to a number of contradictions in the story of the plaintiff herself and to certain points in which it conflicts with the story as told by her mother and sister. While it is no doubt true that criticism can rightly be directed to these aspects of the matter, it seems to me that the learned District Judge has sufficiently considered these matters and has formed the opinion that, in spite of them, he still prefers the plaintiff's story. Moreover, as was pointed out by learned counsel for the respondent, this would seem to

be one of those cases in which, as is pointed out in *Poggenpoel v. Morris*¹, any false denial by the defendant may properly be considered to lend some corroboration to the woman's story. I would add that the above case has been approved by this Court in *Vedin Singho v. Mercy Nona*².

In the present case, the defendant denied more than the barest acquaintance with the plaintiff at the material time, which denial the learned District Judge has found—and I have no reason to doubt the correctness of his finding—to be untrue.

Taking the case as a whole, and after a careful perusal of the evidence, I have come to the conclusion that the learned District Judge has adequately considered both the facts and the law applicable to them, and that his decision in favour of the plaintiff is one with which it would not be proper for this Court to interfere.

There was no argument on the question of damages and, having regard to the fact that the plaintiff was a school teacher and that her career must have been injured by this episode, I see no reason to conclude that the damages are excessive.

For these reasons the appeal is dismissed with costs.

SWAN J.—I agree.

Appeal dismissed.

