

1957

Present : T. S. Fernando, J.

K. DHARMADASA, Appellant, and P. G. GUNAWATHY,
Respondent

S. C. 725—M. C. Panwila, (Addl.) 10,027

Maintenance—Illegitimate child—Conduct of defendant in making false statements or creating false evidence—Weight as corroborative evidence.

In an application for maintenance in respect of an illegitimate child, the answer to the question whether the defendant's conduct in making false statements or creating false evidence can or cannot amount to corroboration of the applicant's story depends on all the circumstances of the case. Such conduct may amount to corroboration only where it appears that there is reason to infer therefrom that the applicant's story is presumably true.

Warawita v. Jane Nona (1954) 58 N. L. R. 111, distinguished.

APPPEAL from a judgment of the Additional Magistrate's Court, Panwila.

M. M. Kumarakulasingham, for the defendant-appellant.

Walter Jayewardene, with *F. X. J. Rasanayagam*, for the applicant-respondent.

Cur. ad. vult.

December 13, 1957. T. S. FERNANDO, J.—

The question that arises upon this appeal is whether it could be said in this case that the evidence of the applicant that the defendant is the father of the child Dharmasiri born to her on October 28, 1956, was corroborated in some material particular by other evidence.

The applicant who is a relative of the wife of the defendant was employed by the defendant and his wife as a domestic servant for a period of about five years ending in March to April 1956. The learned Magistrate has found on the applicant's evidence that the defendant's wife entered hospital about December 1955 and stayed there for 15 days during which period the defendant had sexual relations with the applicant resulting in the latter's pregnancy and the birth of Dharmasiri. The applicant stated that she returned to her parent's home for the Sinhalese New Year in April 1956, and did not go back to the house of the defendant. She realised she was then pregnant, but did not tell anyone about it. When her condition became apparent to her mother, her mother questioned her but the applicant did not confide in her mother that the defendant was responsible for her condition. She testified that the reason for refusing to disclose the identity of the person who had had sexual relations with her was a request made to her by the defendant that she should hold her tongue about the intimacy. Any statement imputing the paternity of the child to the defendant was first made by the applicant on or about November 15, 1956, i.e., about eighteen days after the birth of the child. On that day the applicant made a complaint to the Wattagama Police and her mother testified that this complaint was made no sooner she learnt from her daughter that the defendant was the father of the newly born child.

The learned Magistrate states in his judgment that the applicant's evidence is corroborated by her mother. If this statement is intended to mean that the corroboration required by the statute is to be found in the evidence of the mother, I regret I am unable to agree. Indeed, learned counsel who appeared for the applicant before me conceded at the commencement of the argument that the mother's evidence in this case cannot possibly be relied on as providing the necessary corroboration. He argued, however, that there are other circumstances which, though not held by the Magistrate as amounting to corroboration, tend to prove that the evidence of the applicant that the defendant is the father of the child is true. He pointed to two circumstances as providing corroboration of the applicant's evidence. The first was an attempt by the defendant to prove falsely that opportunity for intimacy did not exist, and the second was an attempt to bolster up his case of denial by creating or leading false evidence that (i) a man called Piyadasa was living in the applicant's house and that this man might possibly be the father of the child, and (ii) he had made a complaint to the Village Headman on January 8, 1956, that the applicant was missing from his house.

As to the first of these circumstances, the learned Magistrate has held that he does not believe the defendant's evidence that when his

wife was away in hospital his mother-in-law and sister-in-law stayed at his house. As to the second, the Magistrate has disbelieved the evidence (i) of the defendant's witness Loku Banda who stated that he was aware that a man called Premadasa was keeping the applicant as his mistress, and (ii) of the Village Headman that the defendant did on January 8, 1956, make the complaint referred to above.

Counsel has referred me to the recent judgment of Sansoni J. in *Warawita v. Jane Nona*¹ in support of his argument that the false evidence of the defendant in regard to lack of opportunity for sexual intimacy and the other false evidence referred to above provide the corroboration required by the Ordinance. The facts of the case before me are clearly distinguishable from those of *Warawita v. Jane Nona*¹ where the false statements of the defendant were of such a nature as to be capable of leading to an inference in support of the applicant's evidence as to paternity. I should like to refer to the case of *Jones v. Thomas*², where a Divisional Court of the King's Bench ruled that a false statement made by the alleged father before the hearing of the complaint in affiliation proceedings was not necessarily corroboration of the woman's evidence in any material particular as required by Section 4 of the Bastardy Laws Amendment Act, 1872. The justices had there stated a case for the opinion of the King's Bench, and one of the matters relied on by the justices as corroboration was stated by them as follows:—

“ But what impressed us more than anything was the untruthful suggestions made on the appellant's instructions to the respondent, and what we regarded as the untruthful evidence given on his own behalf in support of those suggestions. In our judgment the appellant and certain witnesses had agreed to give false evidence concerning the respondent in order to defeat the respondent's application, and we could not but view his denial of the respondent's evidence in the light of this fact, and regard his whole conduct in the matter as strong corroboration of the respondent's evidence ”.

As to this, Avory J. stated (at page 329), “ that means that the appellant's conduct in putting forward a defence which they did not believe afforded corroboration. It might just as well be said that the appellant's denial on oath that he was responsible for her condition afforded corroboration of the respondent's evidence ”. Dealing with the same matter, Lawrence J. in the same case stated (see page 332), “ in the present case the justices have relied most strongly upon the case put forward by the appellant and his witnesses in the bastardy proceedings which they disbelieved as corroborating the mother's evidence. It appears to me that if this is corroboration any case put forward by an alleged father which is disbelieved may be regarded as corroboration of the mother's evidence ”. Whether a defendant's conduct in making false statements or creating false evidence can or cannot amount to corroboration must depend on all the circumstances of the case. If I may say so with great respect, the matter was put succinctly and correctly by Lord Hewart C.J. in the same case (at p. 327) when he stated that “ the conduct of the alleged

¹ (1954) 58 N. L. R. 111.

² L. R. (1934) 1 K. B. D. 323.

father may amount to corroborative evidence where it appears that there is reason to infer from such conduct that the mother's story is presumably true, as in *Mash v. Darley* and *Thomas v. Jones* and in the Scottish case of *Dawson v. McKenzie*".

Notwithstanding the findings of the learned Magistrate that the defendant has given false evidence and has been responsible for leading or introducing false evidence as related above, I do not find it possible to reach a conclusion that this conduct on the part of the defendant is capable of leading to an inference in support of the applicant's evidence that the defendant is the father of the child Dharmasiri. The circumstances relied on by counsel do not provide the statutory corroboration required in this class of case, and in that view of the matter the applicant fails and her application should have been dismissed.

The learned Magistrate has stated that the applicant is a simple and uneducated girl and he has obviously been impressed by her evidence. The requirement of corroboration of the applicant's evidence as to paternity is, however, real and not merely formal. I have therefore to allow this appeal, although I must say I do so with some reluctance.

I set aside the order for maintenance and direct that the application be dismissed. There will be no costs of this appeal.

Appeal allowed.

