

1939

*Present : Abrahams C.J.*DOLE *v.* ROMANIS APPU.821—*P. C. Kegalla, 36,875.**Evidence—Charge of incest—Evidence of victim—Corroboration.*

In a charge of incest it is not safe to convict on the uncorroborated testimony of the alleged victim.

Corroboration must be supplied by evidence from an independent and not a self-serving source.

A PPEAL from a conviction by the Police Magistrate of Kegalla.

Cyril E. S. Perera (with him *Mackenzie Pereira*), for the accused, appellant.

D. Jansze, C.C., for respondent.

Cur. adv. vult.

February 7, 1939. ABRAHAMS C.J.—

The appellant was convicted of incest with his own daughter who was at the time 15 years of age. As a result of this intimacy the girl gave birth to a child. The learned Magistrate sentenced the appellant to one year's rigorous imprisonment.

The learned Magistrate said that "the girl is still quite a child and obviously was speaking the truth and I accept her evidence that the accused committed incest on her. It is most improbable that a girl of this age would falsely charge a father, and I have no doubt that this is not a false charge". Now there is no objection to a Magistrate being impressed with the truthfulness of a partner in incest. Such a person is an accomplice and before proceeding even to consider the question of corroboration, when the evidence of the girl is necessary to a conviction,

¹ *A. I. R. (1926) Calcutta 877.*

it is obvious that the preliminary question is whether she appears to be a witness of truth. But that does not dispose of the question of corroboration. The learned Magistrate said that he did not think any corroboration is necessary but it is always helpful. That is not a correct statement of the practice in these courts. It is a principle that it is dangerous to act upon the uncorroborated evidence of an accomplice, which clearly means that although a conviction is not necessarily bad because it is founded on the uncorroborated evidence of an accomplice there must be the most potent reasons for dispensing with corroboration. Those reasons are not given in this case, nor is there any reason to suppose that they existed. In my view even if intercourse was had with this girl without her consent, corroboration is none the less desirable, because in rape cases, it is a principle, that it is dangerous to convict on the uncorroborated testimony of the alleged victim.

The Magistrate, however, says that there was some corroboration of the girl's evidence, for when she was taken to hospital for her confinement, she told the doctor that her father was responsible for her condition. That, of course, is not corroboration. It is merely telling the doctor what she told the Court, otherwise if she told twenty people on twenty different occasions, that would amount to twenty corroborations. Corroboration must be evidence from an independent source, not a self-serving source.

Crown Counsel says very fairly that he is unable to support the conviction. I therefore allow the appeal and acquit the appellant.

Set aside.

