

A

DAVID PETER

v.

MARIA LEE

[SUPREME COURT, 1962 (Macduff C.J.), 15th, 29th June]

B

Appellate Jurisdiction

*Bastardy—evidence and proof—corroboration—evidence amounting to—Bastardy Ordinance (Cap. 33) s.6(1)—Affiliation Proceedings Act 1957 (5 & 6 Eliz. 2, c.55) (Imperial) s.4(2).*

*Evidence and proof—bastardy proceedings—corroboration—evidence amounting to—Bastardy Ordinance (Cap. 33) s.6(1).*

C

In proceedings by the respondent against the appellant for an order adjudging the appellant to be the father of the respondent's bastard child, the sister of the respondent gave evidence that the respondent was "going with" the appellant during the period when the child was conceived, that she did not go out with any other man during that period, and that she usually (as often as four times a week) went to the appellant's quarters at night.

D

*Held:* The evidence indicated the probability of intercourse having taken place between the appellant and the respondent and therefore amounted to corroboration of the respondent's evidence.

E

Cases referred to: *Burbury v. Jackson* [1917] 1 K.B. 16; 115 L.T. 713; *Reffell v. Morton* (1906) 70 J.P. 347; *Moore v. Hewitt* [1947] K.B. 831; [1947] 2 All E.R. 270.

Appeal against decision of magistrate adjudging appellant the putative father of respondent's child.

R. I. Kapadia for the appellant.

F

G. M. G. Johnson for the respondent.

MACDUFF C.J. : [29th June, 1962]—

G

This is an appeal against the decision of the Acting Senior Magistrate, Suva, adjudging the Appellant the putative father of the Respondent's bastard child and ordering him to pay the sum of 17s. 6d. per week for the maintenance of the child.

H

The first ground of appeal taken was that the learned Magistrate erred in allowing cross-examination of the Appellant upon matters pertaining to an interview with a Mr. Shankar Lal, a probation officer, after he had ruled that the evidence of Mr. Shankar Lal thereon was inadmissible. Some small part of the cross-examination of the Appellant might have concerned interviews with the probation officer after he had taken the position of trying to effect some sort of reconciliation or settlement between the parties, although on the

evidence it is doubtful whether at any time he could be said to have acted in any way for the Appellant. It appears to me from all the circumstances that the questions now objected to were in fact admissible. In any event the sum total of the effect of the Appellant's answers to such questions was to strengthen his own case. The learned Magistrate has not relied on, or indeed even referred to, an offer made by the Appellant to Mr. Shankar Lal. It would appear that he has deliberately ignored it in arriving at his decision. I can, therefore, see no merit in this ground of appeal.

The main ground of appeal was that the verdict was unreasonable and could not be supported having regard to the evidence. Under this head Counsel for the Appellant contended that there was no corroboration of the Respondent's evidence. In passing I should point out that such a contention forms a separate ground of appeal and if not specially pleaded may entail an appellant being estopped from arguing it.

Section 6(1) of the Bastardy Ordinance (Cap. 33 Laws of Fiji) requires that the evidence of the mother be corroborated in some material particular by other evidence to the satisfaction of the Magistrate. This requirement is the same as that under Section 4(2) of the Affiliation Proceedings Act, 1957, which replaced similar provisions contained in the Bastardy Laws Amendment Act, 1872. It is contended by Counsel for the Appellant that the evidence of the Respondent's sister, Ana Lee, does not amount, in law, to corroboration of the Appellant's evidence in that it goes no further than to show that there was opportunity for the Appellant and Respondent to have had intercourse. Reliance was placed on the authority of *Burbury v. Jackson* [1917] 1 K.B. 16 in which it was held that the fact that the complainant and the alleged father were seen in a barn together, in which place their common employment required them to be at divers times, was evidence of nothing more than opportunity to indulge in intercourse and was not corroboration.

The evidence given by Ana Lee in the present case goes a great deal further than that. Her evidence was that the Respondent, who lived with her, was "going with" the Appellant from the end of March until the end of April, 1961, during which period the Respondent's child was conceived, that she did not go out with any other man during that period, and that the Respondent usually, as often as four times a week, went to the Appellant's quarters at night. The test as to what is corroboration in bastardy cases was expressed by Alverstone, L.C.J. in *Reffell v. Morton* (1906) 70 J.P. 347 at p. 351 in these words:

"I do not wish to lay down any definition as to the conditions which evidence must fulfil in order to be material within the meaning of the statute, for reasons I have endeavoured to explain; they may vary from time to time, according to the story set up, and the questions put in cross-examination, the effect of which might be to make that material which was otherwise immaterial. But apart from any particular case, I should think that to be material the evidence must have some relation to the

conduct of the person charged, that is, the putative father, or have some relation to the probability of his being the father; I do not say possibility, which may be going too far."

A A similar view was expressed by Lord Goddard, C.J. in *Moore v. Hewitt* [1947] 2 All E.R. 270 where he is reported at page 273 to have said:

B "It seems to me that, it being proved by independent evidence, that these young people were associating at different hours of the day and night, being in each other's company for various periods of time, and so forth, that is evidence which the justices could regard as corroboration. That is amply supported by a case in the Court of Session, *Dunn v. Chalmers*. It would, I think, be going far beyond any case which has ever yet been decided to say that justices were not entitled to take the circumstances of the present case into consideration, more especially when there is no suggestion that the girl was associating with anyone else. The parties were associating in circumstances which might naturally lead to them having sexual intercourse. I do not think it would be possible in those circumstances to hold on the facts found by the justices that there was no evidence which would tend to make it probable—that is the test—that the respondent's story was true and that the appellant, therefore, was the father of the child."

D Applying those principles then the evidence of Ana Lee indicates the probability of intercourse having taken place between the Appellant and Respondent and such evidence is, therefore, corroboration.

E On the evidence as a whole the learned trial Magistrate believed the evidence of the Respondent, and that of her sister, Ana Lee, and disbelieved the Appellant's denial of intercourse. I can see no reason to disagree with the finding of the learned trial Magistrate in doing so—in fact I would be wrong if I did. The appeal against the bastardy order is accordingly dismissed.

F The Appellant has also asked that the amount of the order—17s. 6d. per week—be reduced. His Counsel did not argue this matter. In any case, in view of the Appellant being a single man and earning a salary of £27 per month, I consider the amount of the weekly payment to be very reasonable. Appeal against the quantum of order for maintenance is also dismissed.

*Appeal dismissed.*