IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

AT LAUTOKA

CIVIL APPEAL No, 20 of 1982

BETWEEN : AZAM ALI s/o Amzad Ali — Appellant

AND : SEREANA ROGOLEA — Respondent

Mr S R Shankar — Counsel for the Appellant

Mr M Raza — Counsel for the Respondent

J U D G M E N T

The respondent had a son born on 19/1/82 of which she claimed the appellant was the father. She commenced action against him for maintenance on 2/3/82, and the matter was heard before the magistrate on 25/6/82, the respondent being in person and the appellant being represented by counsel. In evidence she claimed that she was a virgin when she met the appellant and had never had sexual intercourse with anyone else. She said she had intercourse with the appellant first about a week after she met him on 18/3/78. She said she had intercourse with him many times after that, the last time being when she was 5 month's pregnant. In cross-examination in answer to a question she said she last had sex with the respondent on 12/5/78. That is clearly inconsistent with the other statements but then uneducated witnesses' knowledge of and estimates of dates are notoriously inaccurate. But on the other hand there is no reason to doubt her assertion that she never had intercourse with anyone but the appellant, and that she had had intercourse with him when she was 5 month's pregnant – which would be somewhere about August 1981.

The magistrate saw and heard the witness and was quite satisfied that though the respondent may have been confused about dates in other respects her evidence was reliable. And it must be remembered that her evidence as to her relations with the appellant, that she had been a virgin till she met him, and had never had intercourse with anyone else, were quite unchallenged by any other evidence.

Section 18(2) of the Maintenance and Affiliation Act requires the evidence of the complainant to be corroborated in some material particular. There was very little corroborative evidence particularly with direct bearing on the question of sexual intercourse. But there was evidence - again uncontradicted evidence - that the appellant and respondent were acquainted, and that the appellant used to call at the respondent's house and ask her to go with him. This does not necessarily lead to a conclusion that they were indulging in sexual intercourse, but in the circumstances it was a situation in which one might have expected the appellant to give some explanation. The parties were obviously on friendly terms and in the absence of any other explanation makes the complainant's story more believable. And that is the purpose of corroboration - i.e. evidence that lends credence to the complainant's story and tends to show that she has been telling the truth.

At the trial witnesses had said that the baby looked like the appellant, and the child was brought into court and shown to the magistrate. It was a matter of complaint by the appellant's counsel that the magistrate had treated this as corroboration of the respondent's story. But this is not correct - or at least it exaggerates the situation. In his judgment the learned magistrate quite clearly indicated that he was well aware that too much weight should never be placed on the appearance of the baby in deciding who his father was. But nevertheless in certain exceptional circumstances the appearance of a child may have a certain significance.

In this case the baby had straight black hair and appeared to be a child of mixed origins - as a child with the respondent as mother and the appellant as father would be.

If the child had been a more typical Fijian baby that would certainly have made the respondent's story virtually untenable. But the magistrate considered the child's appearance consistent with the respondent's story of its mixed racial origin, and although he did also say the child had certain features resembling the appellant, I do not consider that the magistrate's judgment really went much further than that.

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Clearly there was a bare minimum of corroboration for the respondent's story, but there was some corroborative evidence which tended to underline the truth of her story, and in the absence of any other evidence the magistrate could hardly have found other than he did.

The appellant's appeal against the finding that he is the putative father of the child is therefore dismissed.

The learned magistrate, after finding the appellant to be the putative father ordered him to pay $8.00 per week in maintenance. There was no evidence before him as to the means of the appellant - except perhaps that he was able to afford the services of counsel. He is stated in the complaint to be a cleaner with Flick Pest Control, but no further details are given.

It is always open to the appellant to return to the court, produce evidence as to his financial means and ask for the maintenance to be reassessed. He can still do that. He could have asked and can still ask the magistrate, under Section 25 of the Act to get a probation officer's report as to the parties' means. Even in this court the appellant has chosen not to give any evidence as to his means so that it is not possible at this stage to say whether $8.00 a week is excessive or unreasonable.

The whole appeal is therefore dismissed with costs to be taxed if not agreed.

LAUTOKA
31 JANUARY 1984

G O L Dyke
JUDGE