IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

000149

AT LAUTOKA

Appellate Jurisdiction

Civil Appeal No. 13 of 1978

BETWEEN:

ABHAY CHAND s/o Raghubir — Appellant

-and-

ILISAPECI LIGALAU — Respondent

Mrs. Billeam, Counsel for the Respondent
Mr. G.P. Shankar, Counsel for the Appellant.

JUDGMENT

This appeal arises out of an affiliation action in which the male appellant Abhay Chandra was successfully sued by the respondent Ilisapeci Ligalau for an order declaring him to be the father of her illegitimate child.

It is the second appeal resulting from this action. In the first appeal the female's (Ilisapeci's) action had been dismissed and she was the appellant. At the initial hearing before a magistrate she had put in a birth certificate showing the child's birth date to be 13/11/76. Ilisapeci appeared in person and stated that as a result of intercourse with Abhay Chandra about June 1975 she had given birth. On that evidence the period of gestation alleging Abhay Chandra to be the father was substantially over 12 months and the magistrate not unnaturally dismissed her action.

When her appeal was first mentioned I ordered various affidavits to be filed and it transpired that the birth certificate bearing 13/11/76 was erroneous and that the correct date of birth was 13/3/76. The magistrate's clerk had also sworn an affidavit in which he agreed that Ilisapeci has said in evidence-in-chief that the child was born on 13/3/76 but the magistrate assumed she was in error in regard to the earlier date because the birth certificate said 13/11/76. There were also hospital records which indicated the confinement as occurring on 13/3/76.

I Ordered a re-trial and this was conducted by a different magistrate who found for Ilisapeci. The appellant is dissatisfied with that finding.

The grounds of appeal commence at No.3 and clauses (b) (c) and (d) reflect on Ilisapeci's credibility and reliability.

It is now accepted by the parties that the child was in fact born on 13/3/76.

In the Court below, at the re-hearing, Ilisapeci stated that her father worked for the appellant's father as a cane-cutter at Korovutu and it was there in 1974 she became acquainted with the appellant and that towards the end of 1974 she first had intercourse with him when he came during the night to the one room bure where she used to sleep.

P.W.2, a girl called Seininiili, used to visit Korovutu and sleep in the same bure. She alleged that she wakened to see them naked together and at one stage appeared to claim that she had seen them in this state on several occasions.

The learned magistrate in his judgment said that he doubted that P.W. 2 frequently saw Ilisapeci and the appellant naked together and had P.W. 2 been the only source of corroboration he would not find for the complainant. However, he also relied upon other evidence to which I will refer later.

Mr. S.R. Shankar, for the appellant mentioned the complainant's evidence as to the dates of birth in these and the earlier proceedings and said she was unreliable in giving two dates, and that the court clerk would not inform the magistrate that it was 13/11/76 if Ilisapeci had said 13/3/76 was the birth date. Mr Shankar was referred to the affidavit of the court clerk which had supported the truth of Ilisapeci's statement that the date she had in fact mentioned was 13/3/76 and not 13/11/76. Mr. Shankar agreed - (although it is not recorded) - that he had overlooked this and this is understandable as it was an affidavit sworn in support of Ilisapeci's application to set aside the dismissal of her suit. Accordinly I see no contradiction there between her evidence in the trial and re-trial. On the contrary it would appear that her evidence as to the date of birth has been particularly constant.

The fact that she said the appellant was at Xavier College when he was in fact attending Derrick Technical Institute was quoted as an instance of her unreliability but it is immaterial.

She did not go to his place of education but merely claimed to have associated with him at week-ends when he came home from the place where he was being educated.

A point is made by the appellant that P.W.2, Seinimili did not give evidence at the first hearing and her appearance at the re-hearing is a matter for suspicion. But at the first hearing Ilisapeci was not represented and her additional witnesses at the re-hearing are no doubt due to the activity of her counsel who appeared for her at the first appeal and the re-trial and who also appears in this appeal.

At the re-hearing her evidence was more detailed than at the first hearing when she was unrepresented. This is not surprising but the fact that her evidence is now more detailed is not proof of a contradiction of her original evidence. It paints a stronger and more detailed picture rather than a different picture.

I cannot agree that the magistrate erred in accepting Ilisapeci's more detailed evidence and that he was thus overlooking major inconsistencies in relation to her former evidence.

Grounds (b), (c) and (d) are related to ground (a) which complains that there was no corroboration of Ilisapeci's evidence implicating the appellant.

Evidence of an early association between the parties in relation to the date of the birth was obtained from P.W. 3, Ratu Naisa Naruna, during cross-examination when he answered that he had often seen them sitting together and talking outside his house in 1974. The appellant denies this.

The appellant admits that on 26/10/75 he travelled on a 'bus from Ba to Sigatoka and he says that by some peculiar chance Ilisapeci was on the same 'bus and informed him that she was visiting relatives in Sigatoka. When the 'bus reached Sigatoka he says that she said it was too late to go to her relatives and he agreed to take her to Navua where he had been working for a time. He booked her into a double room at the Beachcomber Hotel and claims that she seduced him and he alleges next morning she claimed that he had made her pregnant. The magistrate , not surprisingly had no hesitation in rejecting that story. In order to entrap the appellant in the manner that his evidence suggests Ilisapeci would have to have some previous knowledge of his proposed bus journey to Navua so

that she could contrive to be on the same bus as he. It is very doubtful that she could have such knowledge if his evidence is truthful because he says that he never walked or strolled with her, he did not converse with her and he did not know her at all well. She would have had to know reasonably well in advance that he was going to Navua and on his evidence it would be most unlikely that she would in any way be aware of his proposed movements. Again she would have to risk being left in Sigatoka or Navua late in the evening with no accommodation if her plan to entrap the appellant failed and he did not invite her to accompany him. It occurs to me that the scheme which the appellant says was devised by Ilisapeci was meticulously thought out for such a young country girl who cannot read and write. I doubt if she would display such sophisticated cunning. Moreover, if the appellant's evidence is true this uneducated country girl was going to enormous trouble to fix parenthood upon a young man whom she scarcely knew. Why on earth should she choose the appellant if she only had a very slight acquaintance with him?

In my view the magistrate was justified in accepting Ilisapeci's version that when she told the appellant that she was pregnant he arranged to take her to Navua. They only stayed one night at the Beachcomber Hotel and then went to Suva where they stayed with a relative of the appellant. They remained in that house from 26/10/75 to 5/11/75 when the appellant's uncle and P.W. 3 Ratu Naisa Naruma came to collect them and took them to Lautoka. What possible obligation could the appellant owe to Ilisapeci to cause him to act in that manner following a chance meeting on the 'bus. On his evidence she was no more than a passing acquaintance who had cunningly seduced him. Clearly the magistrate was justified in taking the view that the appellant acted in this manner because he knew Ilisapeci very well, knew he was responsible for her condition and at that stage was not prepared to contest his liability.

The appellant and Ilisapeci were taken to Lautoka by the appellant's uncle where she stayed with a relative of the appellant called K. Bal Ram and the appellant stayed with his uncle. After 2 or 3 days P.W. 4 Kitione and the appellant's father came from Ba area to Lautoka where Kitione collected Ilisapeci and took her to Yalalevu. The appellant's father gave

P.W. 4 $50.00.

Normally one seeks corroboration of the complainant's evidence implicating the putative father in the way of his conduct at and immediately preceding the time of conception. In this case, apart from the dubious P.W. Soninili, there is no such evidence which could amount to corroboration. However, the appellant's behaviour subsequent to Ilisapeci becoming pregnant is most significant having regard to her complaint against him. Taking her by 'bus to Navua on 26.10.75; sleeping with her at the Beachcomer Hotel that same evening overnight; and then staying with her in the house of one of his relatives in Suva, reveals an association of a very intimate nature for a period of 10 days, and points to the existence before 26.10.75 of a close relationship. It corroborates her evidence that they were lovers not simply from 26.10.75 onwards but prior to that date. It corroborates her evidence that he took her to Navua following an arrangement they made together, and supports her contention that he knew of her pregnancy and was responsible for it.

The conduct of the appellant's parents and relatives in bringing the appellant and Ilisapeci back from Suva to their home area in Ba province and giving her $50.00 is pertinent. Mr. Shanker argues that the conduct of the appellant's relatives cannot compromise him because he has no control over them. However, one may reasonably suppose that they acted as they did because of what the appellant had told them. They did not act with the righteous indignation of parents whose son had been compromised by some scheming immoral female and they did not bring him away from Suva and leave her to her own devices. On the contrary they consulted and acted in conjunction with her family. The appellant's relatives have not given evidence as to why they acted in this manner and in the absence of such evidence the magistrate could do little else but be guided by their conduct. He had been educated in Suva and whilst he was away from home at Xavier College and Derrick Institute it was not necessary to send uncles from Lautoka at week-ends to bring the appellant home. Whilst he worked at Navua after leaving the Institute the appellant seems to have returned home without parental assistance and prompting. The actions of his parents in bringing him home and in contacting Ilisapeci's parents does not suggest that the appellant

had phoned them to save him from an outrageously immoral female.

There was therefore evidence which the magistrate could and obviously did regard as corroboration of Ilisapeci's evidence.

Ground 4 was very properly abandoned.

For the foregoing reasons the appeal is dismissed.

LAUTOKA,
22nd September, 1978.

(Sgd.) J.T. WILLIAMS,
JUDGE.

Messrs G.P. Shankar & Co. for the Appellant
The Public Legal Adviser for the Respondent.

Date of Hearing: 19th September, 1978.