

J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL No. 82 of 1973

BEFORE: The Hon. President
The Hon. Mr. Justice Hercules, J.A.
The Hon. Mr. Justice Swaby, J.A.

LORRAINE EDWARDS v. MILES WALKER

Joyce Bennett (amicus curiae) for Complainant/Respondent
Horace Edwards Q.C. for Defendant/Appellant.

30th November, 1973 and 4th April, 1974

HERCULES, J.A.:

This is an appeal against an order by His Honour Mr.A.S, Allen, Resident Magistrate for the parish of St. Ann, adjudging the Defendant/Appellant to be the putative father of a child named Rohan Kanhai, born of the Complainant/Respondent, Lorraine Edwards, on 1st January, 1973.

The Complainant/Respondent gave evidence that she and Defendant/Appellant became friends in 1971 and in the course of the friendship they had sexual intercourse about six times - the last time before becoming pregnant being March, 1972. The Defendant/Appellant formed the habit of calling her out of her home at about 8 o'clock in the evenings and taking her up to the Water Drum namely, the Parish Water Tank, where sexual intercourse took place even in April, 1972, after she had missed her menstrual period. On one occasion Complainant/Respondent was at the shop with her aunt, Lelieth Broadrick, when Defendant/Appellant asked her in her aunt's hearing to go with him for a drive.

She obliged and sexual intercourse took place. Under cross-examination by the defendant's Attorney-at-Law she agreed that she had visited the defendant at his home and that on one of those occasions she spent the day there with him. This emphasises the extent of their association and the opportunity for sexual intercourse.

Lelieth Broderick lived at Complainant/Respondent's home in January, 1972, until July, 1972. Broderick used to see Defendant/Appellant come to the home, call her niece, Complainant/Respondent, and carry her away in a car. After a certain period of time Defendant/Appellant would bring back Complainant/Respondent. One Sunday night in April the witness saw Defendant/Appellant come to Lorraine about 4 times. According to her he used to come about 8 p.m. The car was driven away in the direction of Water Drum. This witness saw the couple at Church and at the shop - they talked at the shop, went away together driving, and witness had to walk home alone.

Defence Attorney submitted that there was no corroboration, but the learned Resident Magistrate ruled that there was, without noting what fact or facts he considered capable of amounting to corroboration as required of Resident Magistrates by the case of Allen v. Dwyer (1964) 6 W.I.R. 261.

In any event, the Defendant/Appellant gave evidence denying completely all that had been said by Complainant/Respondent and her witness. All he could say was that he usually saw Complainant/Respondent on the street or in the yard of his girl friend, Bev. Brown. He did not even possess a motor car. It was never suggested that the Complainant had been associating with any other man during the relevant period. On this evidence the learned Resident Magistrate made the order.

The appeal is taken purely on the ground of corroboration as was submitted at the close of the Complainant/Respondent's case.

Mr. Horace Edwards submitted that the evidence did not go beyond a mere association providing opportunity. There are numerous cases on this question and every case has to be decided on its own facts. No one of the cases cited bore facts on all fours with the facts of the instant case.

In Allen v. Dwyer (1964) 6 W.I.R. 261 where the Court of Appeal found there was not sufficient to amount to corroboration, the following statement appears at page 262:-

"Again, if the Court had found some evidence of familiarity, or anything of that nature, when she did come at night, that might be sufficient to amount to corroboration. But here the evidence goes no further than that they spoke together outside the shop, that is in a public place, and spoke about money. There is no evidence corroborating the complainant's statement that the appellant used to come to her house and call her out."

The last sentence describes in precise terms what was to be expected of the learned Resident Magistrate in the instant case when he had supporting evidence that the Defendant/Appellant used to go to Complainant/Respondent's house and call her out at nights for drives and take her back home.

We were further referred to the case of Cracknell v. Smith (1960) 3 All E.R. 569 where, upon a case stated, it was laid down in the Queen's Bench Division that mere evidence of opportunity, could not, of itself, afford corroboration.

This was, in our view, properly followed in the local case of Taylor v. Chambers (1967) 5 Gl. L.R. 72 as it was in Allen v. Dwyer (supra). We are well aware of the principle and would always be disposed to follow it wherever the evidence falls short as it did in those cases.

Mr. Edwards further submitted that corroboration involves evidence of acts of familiarity taking place between the parties. But common-sense and a knowledge of human affairs dictate that that sort of conduct is usually reserved for moments of absolute privacy. To accept Mr. Edwards' proposition would be to make it impracticable for many a complaint to prove her case.

Mr. Edwards based his proposition on certain dicta of Goddard L.C.J. in Moore v. Hewitt (1947) 2 All E.R. 270. We do not consider it necessary to set out the facts of that case, but at page 272 the learned Lord Chief Justice said:

"For many years it has been the practice - often it is the only way in which corroborative evidence can be given in these cases - to prove that the parties were a courting couple or, at any rate, associating on terms of "intimacy and affection." I do not use the word "intimacy" as meaning sexual intercourse. The justices were satisfied that the appellant and the respondent had for a long time been on courting terms. There was no suggestion that the respondent had associated with any other man."

We cannot extract out of this passage, for reasons stated above, Mr. Edwards' submission that corroboration derives only from evidence of acts of familiarity like where the parties are seen kissing or fondling or indulging in other love play in the view of anyone else.

It is interesting to note how the matter was elucidated in other passages in the same case (Moore v. Hewitt) at page 237 paragraph A where the Lord

Chief Justice stated:

"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."

Later, at paragraph C, same page 273:

"The parties were associating in circumstances which might naturally lead them to 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."

The last two passages from the judgment of Goddard L.C.J. are opposite to the instant case. The other cases cited by Mr. Edwards can be easily distinguished and so it would serve no useful purpose to examine them. Unquestionably, mere opportunity for sexual intercourse or vague association between a man and a woman is not sufficient to amount to corroboration. Nevertheless, in our view, conduct which in England would amount to mere opportunity or vague association in the assessment of an English Judge may when evaluated by a Jamaican Judge in the light of local conditions and with an awareness of the manners, practices and behaviour patterns of the people be strong evidence of the sort of association from which the intimacy of sexual intercourse may be inferred. The English authorities should therefore be applied in Jamaica with an awareness of this difference. In our view there was corroboration of the Complainant/Respondent's evidence and we confirm the decision of the learned Resident Magistrate.