

1921
December, 16

*Before Sir Grimwood Mears, Knight, Chief Justice, and Justice Sir
Pramada Charan Banerji.*

W. A. COLLARD (APPELLANT) v. MARIE AGNES COLLARD AND
ANOTHER (RESPONDENTS).*

*Divorce—Evidence—Proof of adultery in contested cases—Practice—Un-
corroborated testimony of single witness—Nature of corroboration
required.*

The rule of practice prevailing in the Divorce Courts in England in contested cases is that the entirely uncorroborated evidence of one person is not taken to be sufficient to establish adultery. *Evans v. Evans* (1) and *Simmons v. Simmons* (2) referred to.

Adultery can, however, be established by the entirely uncorroborated evidence of one witness as to the particular act, provided that there is evidence of a similar character in regard to other offences which can be and are treated as corroboration.

THIS was an appeal under section 10 of the Letters Patent from the judgment of a single Judge of the Court. The facts of the case are fully stated in the judgment of MEARS, C. J.

Babu B. B. Chandra and Munshi Surendra Nath Varma, for the appellant.

Mr. R. K. Sorabji and Babu Lalit Mohan Banerji, for the respondents.

MEARS, C. J. :—These are appeals by the husband, the wife and the co-respondent in a matrimonial matter. On the 15th of November, 1920, the wife filed a petition against her husband alleging cruelty and adultery. She gave sufficient specific instances of cruelty to make that a complete charge if she had been able to support those instances by evidence. Her petition also alleged adultery with sufficient precision to enable that to be a complete charge. If the court had accepted the charges of cruelty and adultery she would have been entitled to her decree. The defence of the husband was a complete denial of those charges.

In the husband's answer of the 13th of December, 1920, he set up not very clearly defined allegations, but said that he had evidence with which he could prove that his wife, the petitioner, had committed adultery with Mr. Dutton; but he said he did not wish to press the charge, and he attributed the divorce proceedings to Mr. Dutton.

* Appeal No. 44 of 1921, under section 10 of the Letters Patent.

(1) (1344) 1 Robert., 165. (2) (1647) 1 Robert., 566;

The hearing of the wife's petition was commenced on the 7th of January, 1921, and on the 7th and 8th of January, the wife's evidence, that of Mr. Dutton and that of Mr. Collard were taken; and then it appeared that the charges of cruelty rested almost, if not entirely, upon the uncorroborated evidence of the lady; and that the charges of adultery, as to the details of which the lady herself had no first-hand knowledge, had been supplied to her by Mr. Dutton. Mr. Collard then asked to be allowed to file a cross petition, and there was some argument as to whether he could be allowed to take this course because he had in court definitely withdrawn any imputation of misconduct against his wife. In the very singular circumstances of the case he urged that he should be allowed to file a cross petition, because all these charges of adultery were made against him by a man who was, as he contended, the lover of his wife. The Court allowed the cross petition to be put upon the file and gave 15 days for the wife, who in that petition had become the respondent, and the co-respondent to file their answers. They were duly filed and then the hearings proceeded.

Mr. Justice WALSH came to the conclusion on the petition of the wife that she had failed to establish her allegation of cruelty. He thought Mr. Collard very likely was not an ideal husband. He thought Mr. Collard at times lost his temper. I read Mr. Justice WALSH's judgment as inclining to the belief in his own mind that at times Mr. Collard may have treated his wife with some degree of roughness. But the evidence of cruelty which was denied by Mr. Collard, remained entirely uncorroborated by anybody. No witness was called except Mr. Dutton who spoke to his having been present once when Mr. Collard was rude to his wife. No other living person was called to support Mrs. Collard's story, and, therefore, Mr. Justice WALSH felt constrained to dismiss that part of her petition.

On the question as to whether Mr. Collard had been guilty of adultery he came to a conclusion adverse to him. That conclusion would not entitle the wife to anything more than a judicial separation; but it had, as it happened, in view of the cross petition, the very important result of operating as a discretionary bar when the husband's cross petition came up for consideration.

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The incidents of adultery which are alleged against Mr. Collard rest upon the evidence of Mr. Dutton, of a man named Anwar Khan and another man named Kallan. Mr. Justice WALSH saw all these three persons in the witness-box and he believed the evidence which Dutton gave, but he totally disbelieved the evidence of Anwar Khan and Kallan. That being so, it will be seen at once that he convicted Mr. Collard of adultery upon the uncorroborated testimony of one witness. We are by no means prepared to say that we disagree with Mr. Justice WALSH when he says that he thinks Mr. Collard was guilty of infidelity to his wife. But the matter is very different when we have to consider whether there has been presented to the Court that degree of proof which prudent and cautious men must demand when they have to approach so serious a matter as divorce. We have referred Mr. *Sorabji* to what we believe to be the rule of practice prevailing in the Divorce Court in England in contested cases, namely, that the entirely uncorroborated evidence of one person is not taken to be sufficient to establish adultery. And though the cases which are cited in support of this, namely *Evans v. Evans* (1) and *Simmons v. Simmons* (2) are old cases, we do feel that we ought not to act upon the uncorroborated evidence of Mr. Dutton whom we believe, as appears hereafter, to have committed adultery with Mrs. Collard. Adultery can be established by the entirely uncorroborated evidence of the particular act, provided you bring in evidence of a similar character in regard to other offences which can be and are treated as corroboration. Take, for instance, the only case here in which there is any suggestion of corroboration. The allegation is that Mr. Collard admitted to his then intimate friend that he had crept past his wife's bed one night and had connection with a punkha coolie woman. It is agreed that, if this took place, Zainab was the name of the woman. In support of that Anwar Khan speaks to visits which he says he saw Mr. Collard pay to that punkha coolie woman's house. Kallan says that he saw Mr. Collard and the punkha coolie woman between 4 and 5 p. m. in the afternoon walking about and sitting down in his grove, which has a pathway across it, and is frequented

(1) (1844) 1 Robert., 165. (2) (1847) 1 Robert., 566.

by many people, and that he saw this happen not once but many times. Now if we believed the evidence of Anwar Khan and Kallan that would be sufficient corroboration. It is not corroboration of a particular act of adultery, but it leads to the inference that the story of the adultery is true if the evidence of Anwar Khan and Kallan were accepted. In the same way, Mr. Dutton alleged that he accompanied Mr. Collard to Mirpur bazar and that Mr. Collard went into a brothel and having remained there some little time returned, saying that he had seen a favourite girl of his. That is an absolutely uncorroborated incident. But even if one person, who was credible to the Court, had come forward and said :—"I know that girl, I know where she lives and I have seen Mr. Collard going into that house ", that would be corroboration which would be sufficient to establish the allegation. But when all this evidence is analysed, bearing in mind particularly the rejection of Anwar Khan's evidence and that of Kallan's by the Judge, we are left with nothing but these statements of Mr. Dutton ; and that being so, we have to hold, as a matter of practice under the rule which we consider to be a good one and which is spoken of in the cases which we have referred to Mr. *Sorabji*, that the uncorroborated evidence of one witness, even though believed, must not be acted upon so as to establish adultery either in man or woman. In that view of the matter we must overset the finding against Mr. Collard that he did, on the occasions alleged, commit adultery. That being so, the position stands that Mr. Collard is entitled to have whatever relief this Court may think he should have upon his cross petition. The charge made by Mr. Collard in his petition was reduced to an allegation that on the 25th, 26th, and 27th of July, 1919, Mrs. Collard and Mr. Dutton came to Allahabad and stayed for 2½ days in the Kenilworth Boarding House.

[The judgment then proceeded to discuss the evidence and it was held that the allegation of adultery against Mrs. Collard was established.]

That being so, the petition of the husband is a well-founded petition, and that part of Mr. Justice WALSH's judgment must be confirmed.

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Mr. *Chandra* has said that his client Mr. Collard is not desirous of making money out of his wife, and, therefore, he voluntarily abandoned any claim to the damages for Rs. 1,000 which Mr. Justice WALSH awarded against Mr. Dutton. In the circumstances we are of opinion that that is a proper thing for Mr. Collard to have done, because Mr. Dutton's point that these two parties, husband and wife, had got very much apart before Dutton became on terms of close friendship with Mrs Collard seems well founded.

The result, therefore, is that the wife's petition fails both on the ground of cruelty and adultery. The husband's petition succeeds on the ground of adultery, and, therefore, we grant to the husband a decree *nisi* for the dissolution of his marriage on the ground of his wife's misconduct with the co-respondent. In view of Mr. Collard's withdrawal of any claim to the damages which were assessed by Mr. Justice WALSH at Rs. 1,000, we rescind that part of the Judge's order. The costs of all parties in both suits and in this appeal must be borne by the co-respondent. The costs which Mr. Dutton will have to pay for both the hearings, including counsel's fees and all other matters, are to be taken to be Rs. 1,100. We allow Mr. Dutton two months from this date to pay this amount.

BANERJI, J.—I concur.

Before Mr. Justice Piggott and Mr. Justice Walsh.

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LAOHEMAN DAS (JUDGMENT-DEBTOR) v. BABA RAMNATH KALIKAMLI-WALA (DECREE-HOLDER).*

Civil Procedure Code (1908), Order XXI, rule 2 (2)—Act No. I of 1872 (Indian Evidence Act), section 92—Execution of decree—Adjustment of decree out of court—Oral executory contract set up by the judgment-debtor as a bar to execution.

The holder of a decree payable by instalments applied for execution of the decree by arrest of the judgment-debtor alleging that nothing had been paid towards satisfaction of the decree. The judgment-debtor thereupon filed a petition alleging that the question of the execution of the decree had been settled out of court by means of an agreement between the parties under which the judgment-debtor was to make a present payment to the decree-holder and further to convey to him certain items of immovable property. The decree-holder denied that any such adjustment as alleged had taken place, and the

* First Appeal No. 54 of 1921, from a decree of Muhammad Shafi, Subordinate Judge of Saharanpur, dated the 8th of January, 1921.