Privy Council Appeal No. 27 of 1942

George Mattouk - - - - - - - - - *Appellant*

v.

Elie Massad - - - - - - - - - *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 5TH AUGUST, 1943

Present at the Hearing:

LORD ATKIN
LORD THANKERTON
LORD PORTER
LORD CLAUSON
SIR GEORGE RANKIN

[*Delivered by* LORD ATKIN]

This is an appeal from a judgment of the West African Court of Appeal who set aside a judgment of Fuad J., a judge of the Supreme Court of the Gold Coast in favour of the plaintiff. The action was brought by the plaintiff against the defendant for the seduction of the plaintiff's daughter Mary by the defendant. The parties were Syrians living at Kumasi. Mary lived with her parents and younger children in a flat above some shops. The plaintiff worked in a store at Kumasi, and his wife worked at a shop of her own. Mary who apparently was a well developed girl of 15 at the material date gave evidence for the plaintiff and deposed that the defendant and his wife used to visit her parents frequently. The defendant aged 42 was a leading man in the Syrian community, and had recently married a young wife of 17, who had a baby born on September 4, 1939. Mary deposed to various occurrences, the first being in October, 1939, when the defendant and his wife were present, at which the defendant had followed her to another room and fondled her, another at a later date when the same thing occurred, and the third when the defendant, his wife and Mary's mother were sitting on the verandah and the defendant exposed his person to her. Later about November 15 the defendant came to the house alone, found Mary alone, and followed her to her parents' bedroom and there had intercourse with her against her will. She then referred to a second occasion when the defendant came again with his wife and the baby. They were on the verandah with Mary and her mother. Mary had the baby in her arms, and when it slept took it to the parents' room to lay it on the bed. As she was bending over with the baby in her arms, the defendant came behind her, put one hand over her mouth and had intercourse with her against her will from behind. The room had two windows, one overlooking the verandah with drawn curtains, and a door opening into the verandah with folding doors which were open but had a curtain over them. She alleged that as the result of this intercourse she gave birth to a child on July 24. It was for the expenses and loss of service consequent upon the birth that the defendant claimed damages. The defendant gave evidence and denied the whole of the girl's story. The learned Judge

accepted the girl's story and gave the plaintiff damages £1,200. It was not suggested by the plaintiff's counsel that there was any corroboration of the girl's evidence or that the story of a connection against the will of the girl should be accepted or that the story of the second intercourse could be received as having happened in the way described. The trial Judge who tried the case without a jury said that he had to warn himself how dangerous it was to act on the girl's evidence alone, but that nevertheless having watched her demeanour and that of the defendant he came to the conclusion that she was telling the truth. The Court of Appeal came to the conclusion that the story was wholly incredible, and entered judgment for the defendant. They emphasized the fact that it was not even contended that the girl's story of rape was true, and were of opinion that the trial Judge was thereby reduced to reconstructing a case of intercourse by consent as to which there was no evidence, and they commented on the fact that the Judge's notes of his judgment did not discuss in any detail the facts of the occurrences which he found to be true. Both the trial Judge and the Court of Appeal attached importance to the difference between rape and intercourse with consent, and appear to have inclined to the view that proof of the former would not support a case of seduction. In the Court of Appeal therefore the difference between the story of rape as told and the story as accepted appeared the more significant.

In their Lordships' opinion the members of the Court of Appeal attached perhaps excessive importance to the falsity of the girl's story as to rape. It is so common for young women in cases of this kind to attempt to save appearances by alleging that they were forced to consent, that such a falsehood by itself does not afford a very strong ground for disbelieving a story otherwise credible. But they were on very strong ground when they dealt with the improbability of the details as narrated by the girl. As to the first occasion when the man and the girl were in the house alone there is nothing intrinsically improbable in the story told. But the events of the second occasion which is supposed to have occurred within 2 or 3 yards of a verandah where the girl's mother and the man's wife were sitting with an open door opening into the bedroom only veiled by a curtain, with details such as counsel for the appellants did not venture to put forward as true, throw the gravest suspicion on the credibility of the girl's story. It is now a commonplace that in judicial inquiries it is very dangerous to accept the uncorroborated story of girls of this age in charging men with sexual intercourse. No doubt there is no law against believing them: but in nearly all cases justice requires such caution in accepting their story that a practical precept has become almost a rule of law. In the case of *Graham* 4 Crim. App. 218 on which the trial Judge relied, the criminal charge had been tried before a jury: the judge had warned the jury of the danger of convicting on the complainant's story alone, but as the jury had convicted the Court of Criminal Appeal did not feel justified in interfering with the decision of the only tribunal of fact. In the present case, however, the Court of Appeal were judges of fact. It was a case in which in a special degree corroboration was demanded, for not only was the girl's story admittedly untruthful on the question of consent, but it was admittedly untrue as to the details of the second occasion. The Court of Appeal were in the circumstances completely justified in refusing to accept the story even when it came supported by the trial Judge's satisfaction with the witness's demeanour. There were other circumstances such as the girl's failure to make any complaint against the man, her repeated denials that she knew she was pregnant, and the very significant evidence of the defendant, his wife, the wife's mother, and the midwife who attended the wife, that after her confinement on September 4 she was for 40 days unable to leave the house, and of the first three of them that she did not leave the house with or without the baby in October and November. Their Lordships therefore are satisfied that the judgment of the Court of Appeal was just: and that this appeal should be dismissed.

They wish to add that there seems to have been some misapprehension on the question above referred to whether proof of rape is inconsistent with seduction. The father's or master's cause of action is for the loss of the

girl's service: and it seems illogical in the extreme to suppose that he could recover if the girl yielded, but not recover if he lost the service because the girl was forced. In one of the earliest cases, *Norton* v. *Jason* (1653) Style 398 (82 Eng. Rep. 809), the declaration was in trespass on the case that the defendant assaulted and carnally knew the plaintiff's daughter *per quod* etc. The case turned on the point that though the daughter had lost her cause of action in trespass by reason of limitation (then 4 years) the father retained his independent action in case with a longer period of limitation. The fact is that in the case of rape the master would have precisely the same action, basing it on the wrong done to his servant, as in the case of any other tort to the servant by which the master was deprived of her service. The action can be brought for seduction whether based on the special wrong done to the master by persuading the girl to have intercourse or on the wrong done to the girl by the felony of rape by which the master suffered damage. And it has also been decided that the fact that the wrong to the servant was a felony has no bearing on the master's action, (*Osborn* v. *Gillett* (1873) L.R. 8 Ex. 88, where the alleged felony was manslaughter).

Their Lordships cannot pass over what appears to have been an unfortunate proceeding of the trial Judge in sending to the Chief Registrar of the Supreme Court of the Gold Coast after the hearing and decision of the appeal what purports to be a fuller statement of his reasons for judgment as delivered by him. It is not clear at what stage these notes were prepared: the learned Judge says they were intended for the assistance of counsel for the defence: but there can be no doubt that part of the note must have been prepared after the criticism of the Court of Appeal on the absence of any detailed reference to the evidence. However well meaning the intention it appears to their Lordships that any practice of preparing such a note and placing it on record after appeal is objectionable, and it is to be hoped that it will not be repeated. Their Lordships will humbly advise His Majesty that the appeal be dismissed. The appellant must pay the costs of the appeal.

(28387) Wt. 8226—7 90 8/43 D.L. G. 338

In the Privy Council

GEORGE MATTOUK

v.

ELIE MASSAD

DELIVERED BY LORD ATKIN

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS.
DRURY LANE, W.C.2.

1943