GMA-G-2. 18,1961

IN THE PRIVY COUNCIL No. 55 of 1960

ON APPEAL
FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE COURT OF APPEAL

IN THE MATTER of the INTERVENTION BY THE ATTORNEY-GENERAL IN DIVORCE PETITION No. 3 of 1956.

B E T W E E N :

SYDNEY HASTINGS DOWSE Appellant

and

THE ATTORNEY-GENERAL OF THE FEDERATION OF MALAYA Respondent

C A S E FOR THE RESPONDENT

RECORD

1. This is an appeal by leave of the Court of Appeal for the Federation of Malaya (hereinafter called "the Court of Appeal") dated the 13th June 1960 from the Judgment of the Court of Appeal delivered on the 24th February 1960, dismissing the Appellant's appeal from the judgment of the Supreme Court of the Federation at Penang dated the 22nd January 1960 rescinding a decree nisi granted to the Appellant on the 6th November 1958. p.83 p.82 pp.51-61

2. On the said 6th November 1958 the said Supreme Court (Rigby J.) on the Appellant's Petition for dissolution of his marriage to Mary Ann Dowse decreed that the said marriage be dissolved by reason of the desertion of the Appellant by his said wife, unless sufficient cause be shown to the Supreme Court within three months of the said decree. p.1

3. By appearance entered on the 3rd February 1959 the Respondent by virtue of the provisions of section 18 of the Divorce Ordinance 1952 of the Laws of the Federation intervened in the said proceedings to show cause why the said decree nisi should not be made absolute.

4. The provisions of the said section 18 of the Divorce Ordinance 1952 are as follows :-

"(1) A decree nisi for dissolution or for nullity of marriage shall not be made absolute until after the expiration of 3 months from pronouncement thereof unless the High Court by general or special order from time to time fixes a shorter period.

(2) During that period any party may, in such manner as is prescribed or as is directed by the court in any suit show cause why the decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the Court.

(3) At any time during the progress of the suit or before the decree is made absolute any person may give information to the Attorney-General of any matter material to the due decision of the case or affecting the jurisdiction of the Court, who may thereupon take such steps as he deems necessary or expedient.

(4) If from any such information or otherwise he suspects that any parties to the suit are or have been acting in collusion for the purpose of obtaining a decree of dissolution of marriage or of nullity of marriage contrary to the justice of the case, or that material facts have not been brought before the Court, he may intervene in the suit and show cause why the decree nisi should not be made absolute.

(5) On cause being so shown, the Court shall make the decree absolute, or reverse the decree nisi or require further inquiry or otherwise deal with the case as the Court thinks fit".

5. By his Plea dated the 16th February 1959 the Attorney-General alleged :-

P.3. (1) The said Decree was obtained contrary to the justice of this case, by the reason of the material facts hereinafter appearing not having been brought to the notice of the Court.

(2) On the 26th February 1958, and on at least 3

other occasions in March 1958, the Appellant committed adultery with one Tan Phaik Kooi of No. 25 Codrington Avenue, Penang at the residence of the Appellant at Scott Road, Penang.

The Respondent therefore prayed the Supreme Court:

(1) that the decree nisi should be rescinded; p.3.

(2) that the Appellant's said Petition should be dismissed;

(3) that the Appellant should be condemned to pay the Respondent's costs.

6. On the 19th January 1960 the said proceedings were heard before the Supreme Court (Rigby J.). On behalf of the Respondent's intervention twelve witnesses were called, but it is not necessary for the purposes of this Case to set out the evidence given by all the witnesses.

7. The main witness called on behalf of the Respondent was the said Tan Phaik Kooi named in the Plea. She gave evidence that she lived next door to p.9 l.28
a woman called Khaw Beng Seok who was in 1958 employed by the Appellant as a domestic servant and that at her p.7 l.22
suggestion the witness visited the Appellant's house. The witness described four visits in or about March and April 1958 and said that on the occasion of each visit the Appellant had sexual intercourse with her. She said that before the first visit she had been a virgin and that on each occasion intercourse was against her wish. She also said that the Appellant p.9 l.12
had on the second occasion given her five pills to prevent pregnancy. The witness said that in fact she became pregnant and that some time later she and her guardian and her guardian's sister went to the Appellant's house. She was unable to give the date of this visit but from evidence given later it became clear that it was on the 12th August 1958. On this occasion the Appellant told the said Khaw Beng Seok to take the witness to his Doctor, Dr. Menon. Dr. Menon examined her and found she was five months' pregnant. The witness said that she had never had p.13.l.30
intercourse with anyone else and that on the 7th p.13.l.33
December 1958 she gave birth to a child at the Maternity Hospital, Penang, of whom the Appellant was p.13.l.36
the father. The witness said that shortly after the visit to the Appellant she reported the matter to the p.88
Police and her statement to the Police at Pulau Tikus Police Station made on the 22nd August 1958 was put p.14.l.20

in evidence at the request of the Appellant for the purpose of cross-examination. The witness was cross-examined about discrepancies between her
p.21 l.28 evidence and the said statement and two Affidavits
p.20 l.25 sworn by her in February 1960, in the present proceedings. The witness was also cross-examined about the contents of documents written by a firm of solicitors on her behalf in an action against the Appellant for breach of promise of marriage. It was also alleged in cross-examination that the
p.22 l.4 witness had been molested some time ago by a
p.16 l.8 Chinese Salesman and that her sister was a prostitute. Both these allegations were denied by the witness. In cross-examination and in answer
pp.22-23 to the Court the witness admitted that she had been to the Appellant's house on one occasion before the four visits to which she had referred in her evidence in chief and that on that occasion she had met the Appellant but that no sexual intercourse had taken place.

8. Lim Im Chua, a woman, the guardian of Tan Phaik
p.25 l.3 Kooi, gave evidence of the visit to the Appellant's
p.25 l.10 house with her ward. She said that they first saw Khaw Beng Seok the Appellant's servant, and asked
p.25 l.6 to see her employer. A European (who according to the Appellant's admissions in evidence must have been the Appellant) came to the door. The witness
p.25 l.12 told the Appellant that Tan Phaik Kooi was pregnant and that he was responsible and should take care of
p.25 l.17 the child. The Appellant denied he was responsible and then said "Don't worry. I'll ask Beng Seok to take her to see Dr. Menon for examination". In
p.26 l.7 cross-examination the witness said that the Appellant said that he did not even know the girl and she did
p.26 l.9 not look pregnant and that he offered to have her examined by the Doctor.

9. Lim Im Swee, a sister of the witness referred to in the last paragraph, also gave evidence of this
p.28 l.24 interview. She said that they went to the Appellant's house at about 9 p.m., saw Beng Seok, and
p.28 l.27 later the Appellant. The Appellant told them to go away as they were making a disturbance and threatened
p.28 l.30 to call the Police. Beng Seok told the Appellant that the girl was pregnant and the Appellant asked
p.29 l.1 the girl to go inside the house with him and Beng Seok. They went inside. Later they came out and the witness told the Appellant that the girl was
p.29 l.5 pregnant and that he was responsible. The Appellant denied that he was responsible. The witness asked him what he was going to do with the girl. He said
p.29 l.10 he would help. The witness asked him in what way

and he said he would have the girl examined by a Doctor and he then told Beng Seok to take the girl to a Doctor at 10 o'clock the next morning. p.29 l.12 p.29 l.14

9. Kee Hup Chye, an uncle of Tan Phaik Kooi, said in evidence that towards the end of 1958, which he later said might have been in August of that year, he received a telephone call from the Appellant who asked to make an appointment with him as he wanted to speak to the witness about his niece. The Appellant said "I understand that she has been to see you I would like to talk things over". An appointment was made at the Appellant's house and the witness with his sister saw the Appellant. The Appellant told the witness that his case with his wife was progressing and that there was certain unpleasantness and that "now this girl had brought up accusations against him which were untrue". The Appellant gave his word to the witness that the accusation was false and told him that as he was the girl's uncle he should advise her not to do anything or he (the Appellant) would sue her for defamation of character. The witness said "I don't know. I have taken her to a lawyer and it is now a matter for her and her lawyer". None of this evidence was challenged in cross-examination. p.26 l.22 p.28 l.15 p.26 l.33 p.27 l.1 p.27 l.27 p.27 l.31 p.27 l.33 p.28 l.1

10. With the consent of both parties a statement of Dr. Menon was put in evidence. The Appellant's Counsel stated that he accepted that the statement was correct in its entirety. This statement was to the effect that on the 13th August 1958 Tan Phaik Kooi was sent to him for examination as a result of a request over the telephone by the Appellant. On examination the girl was found to be five months' pregnant. She alleged that the Appellant was responsible. On the next day the Appellant called on the Doctor to pay the consultation fee and denied that he was responsible for the girl's condition. p.32 l.17 p.89 p.89 l.36

11. The Appellant gave evidence on his own behalf. He denied that he had committed adultery as alleged in the Plea. He said that he had first heard of the allegation on the 12th August 1958 at about 10.45. He was in bed when he was awakened by a noise outside the front gate. He shouted out and then got up, dressed, and went out to find his servant Khaw Beng Seok and the girl and two women at the gate. They alleged that the p.33 l.8 p.33 l.9 p.33 l.12 p.33 l.20

girl was pregnant and that he (the Appellant) was
p.33 l.24 responsible. He said that he had never seen the girl before. One of the women suggested that if the
p.33 l.30 Appellant did not believe that the girl was pregnant he should send her down to his own doctor.
p.33 l.34 First the Appellant refused but the women refused to go away until he agreed to do so. Eventually
p.33 l.38 he agreed but at the same time denied that he had
p.34 l.1 anything to do with the girl. Next morning, the
p.34 l.3 Appellant telephoned Dr. Menon, told him that there had been a commotion outside his house during the night, that the girl had made an accusation against him and had asked him to send her to his doctor. The doctor agreed to see her. The Appellant told
p.34 l.8 the Doctor that he had nothing to do with the girl.

12. The Appellant denied that he had telephoned Kee Hup Chye. He said that when his servant girl had returned from the Doctor, she told him that the Doctor said that Tan Phaik Kooi was pregnant. The
p.34 l.13 servant girl also told him that the girl's aunt and uncle wished to see the Appellant and the Appellant said he would see them and suggested a time. Later
p.34 l.22 Kee Hup Chye telephoned altering the date of the appointment. The Appellant's version of his conversation with Kee Hup Chye was that Kee Hup
p.34 l.27 Chye said he merely wanted the Appellant to confirm
p.34 l.32 as a gentleman whether he had anything to do with the girl and the Appellant said he had nothing to do
p.34 l.37 with her, and Kee Hup Chye accepted this denial. The Appellant also said that, although he had thought on the 12th August that he had never seen
p.34 l.44 the girl before, his servant told him that she knew her as they lived next door to each other and that
p.35 l.1. the girl had once been to the Appellant's house. She had followed the servant's younger sister to his house and the Appellant had seen her in the
p.35 l.3 compound when he arrived at the house in his car.
p.35 l.15 The Appellant also said that in January 1959 when he received letters from the Solicitors giving him notices of two actions, one for breach of promise of marriage on behalf of the girl, and the other for loss of the girl's services on behalf of one of
p.35 l.18 her guardians, he terminated Khaw Beng Soek's employment giving her three months' salary in lieu of notice.

13. Under cross-examination the Appellant said that he did not telephone the Police on the night of the
p.35 l.30 12th August 1958 because he was scared of publicity.
p.35 l.36 He said Dr. Menon was his regular Doctor. He
p.35 l.37 alleged that Kee Hup Chye called on him on a second

occasion on the 30th August and accused him of committing adultery and demanded $30,000 in settlement otherwise he (the Appellant) would not get his divorce. The Appellant said that he would not be blackmailed but when asked why he did not report this to the Police he said he was trying to avoid publicity. He alleged that Kee Hup Chye said that it did not matter anyway since he had already been into touch with the girl's solicitors and the Appellant's wife and her Counsel when she was in Malaya. (The Appellant later said in evidence that his wife left Malaya on the 4th August 1958). None of this had been put to Kee Hup Chye in cross-examination.

p.36 ll.1-4
p.36 l.5
p.36 l.7
p.36 ll. 9-12
p.39 l.39-40

14. The Appellant was re-called by his Counsel and produced his diary and read some entries from February and March 1958. He was asked a number of questions by the Court about sending the girl to his own doctor. He was asked what possible interest it could be to him to find out whether a girl whom he had never seen before (and one incidentally who had just made a completely false and dishonest allegation against him) was pregnant or not. He said :-

p.38-9
pp.39-40
p.39 l.19

> "Because I remembered my wife's threat. When she was here I had a detective to follow her. He reported back that she was being taken round by certain people."

p.39 l.22

The questions by the Court continued as follows:

> "Q. What was the advantage to you of ascertaining whether or not she was pregnant?
>
> A. I did not want a repetition of the commotion.
>
> Q. What was the doctor's fee?
>
> A. I don't know. I square up monthly with the doctor.
>
> Q. Why should this girl - a total stranger to you - have chosen you, of all persons, to blame as being the father of her child?
>
> A. Because I believe that she being paid by my wife to make this allegation.
>
> Yes, I think that is the only reason".

p.39 l.26

RECORD

15. No question had been put to the girl Tan Phaik Kooi to suggest that she had been paid or promised any money by the Appellant's wife to make the
p.40 l.1 allegations, although the Appellant later said that his wife had told him during the Court hearing in July that she had seen a Chinese girl whom he had got into trouble.

p.41 l.3 16. The Appellant was also questioned about an entry in his diary for the 13th August which read "Request two A.'s to come and see me - deny- discuss-deny-". He also said that he had been told by Khaw Beng Seok on the night of the 12th
p.41 l.20 August that the girl was a prostitute and had made an entry to that effect on his Diary.

17. Khaw Beng Seok gave evidence on behalf of the
p.42 l.6 Appellant. She said that she had known Tan Phaik
p.42 l.8 Kooi since childhood and the girl was no friend of her's; she had been "mixed up" with several men.
p.42 l.30 The girl only came once to the Appellant's house
p.42 l.36 when she followed the witness's sister there. She was then seen by the Appellant who asked the witness's sister who the girl was. As to the visit on the 12th August the witness said that this took
p.43 l.14 place at about 8 p.m. and the women shouted at her
p.43 l.17 "Pimp. Old Pimp". She Appellant was awakened by the noise and came out. The girl said she was
p.43 l.23 pregnant but she did not look so to the witness. The old ladies said that the Appellant was
p.43 l.28 responsible and the witness said "it could not be
p.43 l.32 true because she (the girl) had been mixed up with some men". They asked the Appellant to have the girl sent to his doctor for examination. He refused.
p.43 l.34 They kept on making a noise and eventually he asked
p.43 l.36 the witness to take the girl to his doctor and gave
p.43 l.40 her $2 for transport. On the next day the witness
p.44 l.1 took the girl and one of the ladies to see the doctor. The Appellant told the witness that he did not know the girl and she told him that the girl lived next door to her.

18. Under cross-examination Khaw Beng Seok said that
p.45 l.6 during all the period of her employment with the
p.45 l.11 Appellant a lady whose name she did not know was in his house every day from 9 a.m. until the evening.
p.45 l.19 This lady was in the Appellant's car on the occasion when the girl Tan Phaik Kooi was seen by the
p.45 l.30 Appellant at his house. The witness said that on the night of the 12th August 1958 she told the Appellant that the girl was a prostitute.

19. On the 22nd January 1960 the learned Trial Judge

gave judgment. In the course of this judgment he said :-

"Let me say at once that I am in no way concerned in deciding whether or not Miss Tan was a virgin at the time - as it is alleged - that the Petitioner had intercourse with her, nor am I concerned in deciding whether or not in fact the Petitioner raped Miss Tan, nor whether or not he is the father of her child. In fairness to the Petitioner I would say at once that on the evidence that I have heard in this Court in my view no Court could, as a matter of law, and, indeed, on the facts, possibly have convicted the Petitioner on the alleged charge or charges of rape. The allegation of rape, is, no doubt, relevant for the purpose of considering the discrepancies in Miss Tan's evidence and the credit and credibility to be attached to her testimony. p.52 l.5

But the primary and substantial issue before me is as to whether or not it has been proved to my satisfaction that the Petitioner had intercourse with this girl on one or more occasions on or about the 26th February 1958.

3. Miss Tan is a young and attractive girl, aged 23. She lives with her elderly guardian and her guardian's sister at 25 Codrington Avenue. Next door to her lived the woman, Khaw Beng Seok, a woman a great deal older than herself. At the material period Khaw Beng Seok was employed as servant by the Petitioner. She was, in fact, his only servant at that time." p.52 l.33

20. The learned Judge then summarised Miss Tan's evidence and said :-

"Having heard this girl's testimony and watched her demeanour for several hours in the witness box, I am certainly not prepared to say that her story, in so far as it concerns the Petitioner, is a tissue of lies. On the contrary, subject to what I shall later say, I formed the impression that, in substance, her evidence was true." p.54 l.28

21. The learned Judge then went on to say :-

p.54 l.35

"4. But the law is abundantly clear that the same strict proof is required in the case of a matrimonial offence as is required in connection with criminal offences properly so-called.

If the case against the Petitioner rested solely upon the testimony of this girl, even if I implicitly believed her evidence to the very hilt, I would have no alternative but to dismiss this plea of intervention. For the plea of intervention to succeed not only must I be satisfied that this girl's evidence is, in substance, true, but there must be some independent evidence which corroborates her testimony in some material particular and tends to show that her allegations against the Petitioner are, in fact, true."

22. The learned Trial Judge then considered the evidence which might be held to be corroboration of the girl's story. He held the Appellant's conduct as disclosed by Kee Hup Chye's evidence was entirely consistent with his defence and, therefore, he attached no weight to that evidence.

23. The learned Judge then turned to the evidence of the Appellant's conduct in sending the girl to his doctor for examination. He said that he accepted the Appellant's evidence that he was asked by the girl's guardian to send the girl to his doctor, and that he agreed to do so, and the next day he confirmed his instructions to Khaw Beng Seok in spite of the fact that she had told him that the girl was a prostitute. The learned Judge then said :-

p.57 l.13

"Mr. Massie relies upon this evidence as strong corroboration of the girl's story. I feel bound to agree. It seems to me impossible to believe that the ordinary, reasonable man, in similar circumstances, faced with a similar commotion outside his front gate at 9 or 10 p.m. at night and an accusation by strangers that he was responsible for the pregnancy of a girl he had never seen before in his life, would have prepared to give an undertaking that he would send the girl to his own doctor for examination to see whether she was pregnant - merely in order to get rid of the commotion. And even if he had given such an undertaking in order to get rid of the persons causing the commotion, I find it impossible to believe that on the following morning in the cold light of reason, he would

have been prepared to implement that undertaking - particularly after he had been told by his servant that the girl in question was a prostitute. It seems to me that the only reasonable inference is that the Petitioner, for obvious reasons, had a guilty conscience, and he wished to find out whether the girl was, in truth and in fact, pregnant.

"5. The Petitioner has said that the reason why he took this action was because he was already the victim of a great deal of unpleasant publicity as the result of the bitterly contested divorce proceedings which had been going on the previous month (and, indeed, on the 1st August) and which were not yet completed and he wished at all costs to avoid any further publicity. Indeed, he attributed this very charge itself as having been created and inspired by his wife". p.57 l.45

24. The learned Judge then recorded the fact that the divorce proceedings had created a great deal of sensational publicity which must have caused the Appellant distress and that his wife had shown herself to be a thoroughly vindictive woman who from motives of pure spite would go to considerable lengths to resist the dissolution of the marriage. The learned Judge then continued :- p.58 l.3

"6. But be that as it may, and making every allowance for the state of mind of the Petitioner, his anxiety to avoid further unpleasant publicity and his belief - and I am satisfied that it was a genuine belief - that his wife would resort to any steps to prevent him from obtaining the decree nisi for which he was then asking, I cannot and do not believe that his sole reason for sending the girl to his doctor for examination was to avoid publicity at all costs. As I have said, his conduct, in my view, was wholly consistent with the girl's story that he had had sexual intercourse with her and that he was fully prepared to accede to the request of these women that he should send the girl for examination in order that he might find out for himself whether or not the girl was, in fact, pregnant. In my view such evidence affords ample corroboration in a material particular of the truth of the girl's story p.58 l.27

RECORD

that the Petitioner had had sexual intercourse with her. Vindictive as I consider the Petitioner's wife to be, I do not for a moment believe either side, or anyone else, has suborned this girl to give evidence against the Petitioner, falsely accusing him of having had sexual intercourse with her.

I am satisfied that the girl was speaking the truth when she said that the Petitioner had had sexual intercourse with her on 4 occasions. In so far as the 2nd, 3rd and 4th occasions are concerned, I do not believe her when she says that it was against her consent. It is difficult to believe that she would have returned to the house on these subsequent occasions if she had not anticipated a reasonable possibility that what had occurred on the first occasion might well occur again. I am satisfied that there must have been at least on the last three occasions - and probably on the first as well - a substantial measure of consent on her part as to the events that occurred."

p.59 l.15

25. The learned Judge then dealt with points raised by the Appellant's Counsel and repeated that he was satisfied that the girl's story was true and was corroborated in a material particular by the Appellant's conduct in sending her for examination as to her condition.

p.61 l.9

p.61 l.29

26. Finally the learned Judge said that although he would have preferred to have taken a less drastic course than rescinding the decree nisi the Appellant had deliberately and wilfully suppressed the fact of his adultery and that the decree nisi must be rescinded.

27. By Memorandum of Appeal dated the 10th February 1960 the Appellant appealed to the Court of Appeal on the following grounds :-

p.63

"1. That there was no evidence upon which the learned Judge could find that the Plea of the Attorney-General should be allowed.

2. That the learned Judge misdirected himself in law in holding that there was corroboration of the adultery alleged by the Attorney-General.

3. That the learned Judge misdirected himself in accepting the evidence of the alleged adulteress as to the alleged adultery, she on her own admission being an accomplice and having been discredited upon material points.

4. That the alleged corroboration was more consistent with the Appellant's innocence than with his guilt and that the Learned Judge failed to recognise this and misdirected himself.

5. That the Learned Judge failed to give due or any weight to the evidence of one Khaw Beng Seok in support of the Appellant's Answer to the Plea and erred in prefering the evidence of the discredited adulteress-accomplice.

6. That the decision of the Learned Judge was against the weight of evidence.

7. That in fact the Appellant was proved not to have committed adultery."

28. At the hearing on the 22nd and 23rd February 1960 before the Court of Appeal (Thomson C.J., Hill and Good JJ.A.) the 5th ground was abandoned. p.69 l.24

29. On the 24th February 1960 the learned Chief Justice delivered judgment. After summarising Miss Tan's evidence the learned Chief Justice said :-

"Now, it is unlikely that the whole of Miss Tan's story was true. In all the circumstances it is highly incredible that on every occasion the appellant had intercourse with her by force and against her will. That, however, does not mean that her story of having intercourse with him was necessarily untrue and the allegation that she was forced may well be nothing but the pathetic excuse that is put up at some time or another by every young girl who 'finds too late that men betray'. In any event the trial Judge was of the opinion that she was a witness of truth." p.76 l.21

The learned Chief Justice then quoted the Trial Judge's conclusions on Miss Tan's evidence, and continued :-

"Having come to these conclusions, however, the Judge took the view, with which with respect I agree, that what he was concerned with was an allegation of a matrimonial offence and he was bound by authority to hold that it must be proved by the Attorney- p.77 l.5

General who was setting it up as the basis of his plea with the same strictness as that with which a criminal offence would require to be proved. He took the view that Miss Tan was an accomplice in the offence of adultery and that he was not free to find that adultery was made out unless there was independent corroboration of her evidence.

Now, I am not sure that here the Judge did not go too far. In particular, I have doubts (which the case of Fairman -v- Fairman 1949 P. 341 does not wholly dispel) as to whether Miss Tan could properly be said to be an accomplice in adultery as distinct from fornication unless there was some evidence to show that she knew the appellant was married. Nevertheless, on the view I have taken of the case I do not think any injustice will be done if I myself approach the evidence in the way in which it was approached by the Judge.

He looked for corroboration and he thought he found it in the evidence relating to the incident of the 12th August, which I have mentioned but which I have hitherto refrained from discussion.

p.77 l.32

30. The learned Chief Justice then set out the facts of the incident of the 12th August. He stated the contention by both parties as to the inference to be drawn from the facts and said in his view the crucial question was the state of the Appellant's mind and on this he said :-

p.79 l.26

"My own view is that the facts go to show that the appellant's state of mind was that he was more interested in the question of whether or not Miss Tan was pregnant than in anything else. The evidence is that he rang up Doctor Menon on the telephone and arranged for his examination of Miss Tan but afterwards he was not content to ring him up but went round in person to see him and ascertain the result of his examination.

And if the Appellant's real anxiety was as to whether or not Miss Tan was pregnant it does seem to me that that was ample corroboration of Miss Tan's allegations."

p.79 l.38

31. The learned Chief Justice then quoted an extract from the judgment of Lord Reading in Rex v. Baskerville 1916 (2) K.B. 658, 667, in which it is stated that

p.79 l.40

"corroborative evidence is evidence which shows or tends to show that the story of the accomplice that the accused committed the crime is true." p.80 l.8

32. The learned Chief Justice pointed out that the corroborative evidence need not be conclusive. p.80 l.25
The evidence in this case although not necessarily p.80 l.21
inconsistent with the Appellant's evidence was
certainly consistent with his guilt. It was p.80 l.29
independent evidence which tended to prove that
the offence had been committed by the Appellant.

33. Finally, the learned Chief Justice said :-

"The Trial Judge's conclusion as to the p.80 l.33
credibility of Miss Tan is one with which in
itself no Court of Appeal could interfere
and having come to the conclusion that there
was corroboration (if corroboration is
necessary) I can only say that I would
dismiss the appeal with costs." p.80 l.38

34. Both the learned Judges of Appeal agreed
with the above judgment. Good, J.A. added on the
point argued as to the discrepancies between p.81 l.30
Miss Tan's evidence and her statement that the
learned Trial Judge gave the discrepancies very
careful consideration, heard Miss Tan's explana- p.81 l.33
tion and was satisfied. The learned Judge of
Appeal concluded that it was not open to the
Court of Appeal to say the Trial Judge was wrong.

35. The appeal was therefore dismissed with costs.

36. On the 16th June 1960 the Appellant obtained
final leave to appeal to Her Majesty The Yang Di- pp.83-84
Pertuan Agong in Council.

37. The Respondent submits that this case was
fundamentally a question of fact for the learned
Trial Judge that is, whether he believed Miss
Tan's story that the Appellant had sexual inter-
course with her, or the Appellant's story that
he had had nothing whatsoever to do with her and
had only seen her once before she made the
allegation against him. The learned Trial Judge
having heard the two parties give evidence clearly
believed Miss Tan's evidence of the intercourse
and rejected the Appellant's denials. The
Court of Appeal rightly did not interfere with that
finding and it is submitted that it should not be
interfered with now.

38. It was open to the Trial Judge to draw the inferences, which he did, against the Appellant from his conduct on the 12th and 13th August 1958. Further the Court of Appeal agreed with those inferences. In effect these findings are findings of fact on which both Courts have agreed. Further they are matters on which the local courts are better able to judge than any Court in this Country. It is submitted that it would be quite wrong now to interfere with these findings. These findings tended to show that Miss Tan's story was true and therefore they afforded corroborative evidence of her story and the Trial Judge and the Court of Appeal was entitled so to regard them.

39. Further and in the alternative the learned Trial Judge was not bound to look for corroboration of Miss Tan's evidence. He could, and on his view of the credibility of her evidence he should, have found against the Appellant without any such corroboration.

40. In the further alternative, even if the learned Trial Judge should have considered whether Miss Tan's evidence was corroborated, he was not bound to find in the Appellant's favour, if there was no such corroboration. He was bound only to warn himself of the danger of finding against the Appellant on the uncorroborated evidence of Miss Tan. In view of the learned Trial Judge's finding that Miss Tan's evidence was in substance true and therefore that the Appellant's evidence was untrue he would if he had so directed himself have found against the Appellant even if Miss Tan's evidence had not been corroborated. In this respect the learned Trial Judge in the passage quoted in paragraph 21 above stated the law too strongly in favour of the Appellant.

41. Further this is not a case in which there have been such a serious miscarriage of justice or which raises any point of such importance that the decision of the Trial Judge should now be reversed.

42. The Respondent will therefore submit that this appeal be dismissed with costs for the following (among other)

R E A S O N S

(1) BECAUSE the Appellant was guilty of adultery as alleged.

(2) BECAUSE the learned Trial Judge accepted the evidence of Tan Phaik Kooi.

(3) BECAUSE the learned Trial Judge was entitled to draw inferences against the Appellant by reason of his conduct on the 12th and 13th August 1958.

(4) BECAUSE the learned Trial Judge was entitled to regard such conduct as corroboration of the evidence of Tan Phaik Kooi.

(5) BECAUSE the Court of Appeal agreed, or saw no reason to disagree, with the findings of the Trial Judge referred to in Reasons 2, 3 and 4 above.

(6) BECAUSE there is no good ground for interfering with the decision of the Court of Appeal or the Trial Judge.

(7) BECAUSE there was sufficient corroboration of Tan Phaik Kooi's evidence.

(8) BECAUSE there was no rule of law which required the said evidence to be corroborated.

(9) BECAUSE if there was any such rule it would not have prevented the Trial Judge from giving judgment in favour of the Respondent.

(10) BECAUSE on his finding in respect of the evidence of Tan Phaik Kooi and of the Appellant the Trial Judge would have given judgment in favour of the Respondent even if the Respondent had adduced no corroborative evidence.

(11) FOR the reasons contained in the judgment of the learned Trial Judge.

(12) FOR the reasons contained in the judgment of the Court of Appeal.

D. A. GRANT.

No. 55 of 1960

IN THE PRIVY COUNCIL

ON APPEAL FROM

THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL

IN THE MATTER of the INTERVENTION BY THE ATTORNEY-GENERAL IN DIVORCE PETITION No. 3 of 1956

B E T W E E N :

SYDNEY HASTINGS DOWSE
Appellant

- and -

THE ATTORNEY-GENERAL OF THE FEDERATION OF MALAYA
Respondent

C A S E FOR THE RESPONDENT

CHARLES RUSSELL & CO.,
37, Norfolk Street,
London, W.C.2.
Solicitors for the Respondent.