

1983 February 2

[A. LOIZOU, J.]

PETER WILLIAM BETTS.

Petitioner.

v.

CAROL AGNES BETTS.

Respondent.

and

MARIOS ANTONIOU.

Co-Respondent.

(*Matrimonial Petition No. 25/82*).

Matrimonial Causes—Divorce—Adultery—Standard and burden of proof—Opportunity and guilty inclination—Confession of adultery—To be carefully scrutinized—Truth of confession corroborated by surrounding circumstances—Adulterous relationship proved beyond reasonable doubt.

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This was a petition of divorce by the husband on the ground of the wife's adultery with the co-respondent. There was evidence from the petitioner and a witness that the co-respondent stayed several times in the house of the petitioner during the latter's absence for long hours; and on one occasion, when the petitioner knocked and there was no reply, he went to the back of the house, looked through the window and saw the co-respondent half-dressed and trying to put his clothes on, the respondent being also standing nearby. Moreover the respondent admitted her adulterous bond to the petitioner.

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Held, that in addition to the circumstance which have satisfied this Court that there was something more than opportunity and guilty inclination there are the confessions or admissions of adultery by that respondent; that no doubt such confessions have to be carefully scrutinized and the Court should refuse to act upon confessions alone, unless the surrounding circumstances indicate that the confession is true; that the truth

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however, of these confessions is born out and corroborated by the surrounding circumstances; that the burden of proof, which is cast on the person alleging adultery has been discharged by her and this Court is satisfied beyond all reasonable doubt about the adulterous relationship of the respondent with the co-respondent at the material time. The required corroboration of the evidence of the petitioner is to be found in the testimony of his witness; accordingly the case for the petitioner has been proved, that is to say, that the respondent committed adultery with the co-respondent and a decree of divorce nisi is granted on that ground.

Decree nisi granted.

Cases referred to:

Mouzouris v. Mouzouris (1981) 1 C.L.R. 370 at p. 372.

Matrimonial petition.

Petition for dissolution of marriage because of the wife's adultery.

A. Lemis, for the petitioner.

Respondent absent. Co-respondent absent.

A. LOIZOU J. gave the following judgment. This is a husband's petition for divorce on the ground of the respondent's adultery with a person named in the petition. The respondent and the said co-respondent, though duly served, failed to enter an appearance or contest the proceedings. In fact, after she was served with this petition, she left for England with their two children.

The parties were lawfully married at the Registrar's Office at Oban, Argyll in Scotland, on the 10th day of June, 1976. They cohabited at various addresses in England and Kuwait and finally at 5 George Seferis Street, Ayios Nicolaos, Limassol. The petitioner is a Diving Inspector of Works employed in Saudi Arabia but frequently visited his home in Cyprus where he stayed with his wife at the aforesaid address. There are two children of the family, namely, Fraser William Betts who was born on the 25th January, 1978, and Zahra Alice Anne Betts who was born on the 6th May, 1979, now living with the respondent in England. Apparently during his absence the respondent formed a bond with the said co-respondent.

According to the evidence of the petitioner as corroborated by that of his witness, adultery has been established with the degree of certainty that is necessary in such cases.

5 The evidence consists of the petitioner and his witness having seen the co-respondent several times staying in his house during his absence, for long hours, either entering in with his own key in the evening or leaving the house in the morning. On one occasion, when the petitioner knocked and there was no reply, he went to the back of the house, looked through the
10 window and saw the co-respondent half-dressed and trying to put his clothes on, the respondent being also standing nearby.

Petitioner's witness Lorna Achilleoudes, who was a friend of the respondent, also saw the co-respondent visiting and staying at the house of the respondent between the hours of
15 9 a.m. and 1 a.m. Moreover, the respondent admitted her adulterous bond to the petitioner, whereupon the petitioner left his house and went to live at Alasia Hotel. She also spoke repeatedly about it with witness Achilleoudes, her friend, to whom she expressed her love of the co-respondent. As stated
20 in the case of *Mouzouris v. Mouzouris* (1981) 1 C.L.R., p. 370, at p. 372, adopting with approval what is the position as set out in *Raiden on Divorce*, 8th Ed., para. 106, p. 147, to succeed on the issue of adultery it is not necessary to prove the direct fact. For if it were, in very few cases would that proof be
25 attainable. In almost every case the fact has to be inferred from circumstances which lead to it by fair inference as a necessary conclusion. The Court has to be satisfied that there was something more than opportunity before it will conclude about the guilt. Moreover, evidence of a guilty inclination or passion
30 is needed in addition. Proof of general cohabitation excludes the necessity of proof of particular facts to establish adultery and the combination of strong inclination with evidence of opportunity constitutes strong prima facie evidence of adultery but this is not an irrebuttable presumption.

35 In the present case in addition to the circumstances which have satisfied me that there was something more than opportunity and guilty inclination, we have the confessions or admissions of adultery by the respondent. No doubt such confessions have to be carefully scrutinized and the Court
40 should refuse to act upon confessions alone, unless the surround-

ing circumstances indicate that the confession is true. The truth, however, of these confessions earlier referred to in this judgment is born out and corroborated by the surrounding circumstances.

The burden of proof, which is cast on the person alleging adultery has been discharged by her and I am satisfied beyond all reasonable doubt about the adulterous relationship of the respondent with the co-respondent at the material time. The required corroboration of the evidence of the petitioner is to be found in the testimony of his witness. 5 10

I accordingly, find that the case for the petitioner has been proved, that is to say, that the respondent committed adultery with the co-respondent and a decree of divorce nisi is granted accordingly on that ground. The question, however, of the custody of the children and the arrangements which have been or are to be made for her upbringing will be considered (see section 2 of the Matrimonial Proceedings (Children) Act, 1958) together with the application for the making of this degree absolute. 15

There will be, however, no order as to costs as none have been claimed. 20

Decree nisi granted.