

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA

In the matter of an Appeal
Against an order of the High
Court under Sec. 331 of the
Code of Criminal Procedure
Act No. 15 of 1979 and in terms of
the Constitution of the Democratic
Socialist Republic of Sri Lanka.

The Hon. Attorney General

Attorney General's Department,
Colombo 12.

Complainant

Vs

Manamendra Patabendilage
Danapala

Accused

C. A. Case No. : 119 /2014

H. C. Badulla Case No. : 50 /2001

And Now between

Manamendra Patabendilage
Danapala

Accused-Appellant

Vs

The Hon. Attorney General
Attorney General's Department,
Colombo 12.

Complainant Respondent

BEFORE : P. R. Walgama, J &

K. K. Wickramasinghe, J

COUNSEL : AAL Sheron Serasinghe for the Accused-Appellant.

Rohantha Abeysuriya DSG for the Attorney General.

ARGUED ON : 28th October 2016

DECIDED ON : 16th May 2017

K. K. WICKRAMASINGHE, J.

The Accused Appellant (herein after referred to as the Appellant) was indicted in the High Court of Badulla on the following charge:-

On or between 1st of November 2004 to 30th November 2004 in Mahiyanganaya, within the jurisdiction of this court the accused committed an offence punishable under section 364 (2) of the Penal Code as amended by Act No.22 of 1995.

The instant appeal is arising in pursuant to a conviction of the Accused-Appellant for committing rape on Wijesinghe Mudiyanseelage Sriyani Mangalika an offence punishable under section 364(2).

When the indictment was read over to the Accused Appellant, he opted to have the trial before a judge without a jury. After trial the Learned High Court Judge of Badulla found the Appellant guilty of the charge levelled against him. Accordingly he was convicted and sentenced to a term of 15 years rigorous imprisonment and a fine of Rs. 7,500.00 with a default term of 6 months. Furthermore compensation amounting to Rs. 150,000 was ordered to be paid and a default sentence of 18 months RI was also imposed.

Being aggrieved by the said conviction and sentence the Accused Appellant, appealed to this court for the vacation of the same.

During the course of the argument counsel for the Accused Appellant raised following grounds of Appeal:-

(1) The Learned High Court Judge failed to consider that the offence in the indictment has not been proved beyond reasonable doubt. Most of the evidence of the prosecution reveals that the sexual intercourse happened with the consent of the victim who was above 16 years old.

(2) The Learned High Court Judge failed to take into account the delay on the part of the victim to make a complaint and failure to give justifiable reason for the said delay.

The prosecutrix Sriyani Mangalika was living with her mother father and younger sister in a village close to Mahiyanganaya in the Badulla District. She had two brothers living separately. Her mother was not able to walk due to some illness/charm. The Accused Appellant was got down to cut the said charm. He stayed in their house for two days performing rituals. There was a mat in the room with the terms for his work. They had a living room and two other rooms in their house.

According to the prosecution, on the day of the alleged incident, Sriyani's mother was lying down in the living room. Her father had gone to tie cows. She had not mentioned where her younger sister was. The Appellant was performing rituals in one room. He was alleged to have asked Sriyani to bring some coals. When she brought the coals, the Accused was alleged to have lifted his hand and done something. There after she didn't know what happened to her. She had become unconscious. When she regained consciousness, she was on a mat. Her under garments were drawn up to her knees. The skirt remained intact. She found blood and seminal fluid in her genital area. The accused was seated in the room. When she asked the Appellant he had threatened her not to utter a word about the incident. Therefor she was scared to divulge the incident.

It is so obvious that a 17year old girl would have given consent to a 50 year old stranger. It is pertinent to note that in the **Bhoginbhai Hirjibhai Vs State of Gujarat (1983) AIR S.C.753** stated that *"Corroboration is not a sine qua non for a conviction in a rape case. In the Indian setting, refusal to act on testimony of a victim of sexual assault in the absence of corroboration, as a rule is adding insult to injury....."*

Further in the case of **Sunil and others Vs AG 1986(1) S.L.R. Page 230** it is stated that *"It is very dangerous to act on the uncorroborated testimony of a women victim of a sex offence, but if evidence is convincing such evidence could be acted on even in the absence of corroboration."*

Counsel for the Appellant submitted the case of Piyasena Amaradivakara Vs AG , CA 118/2002 decided on 26.03.2008 “.....When there is a delay in making a statement to law enforcing agencies, additional material collected by hearsay or false material can creep into such statement....” (emphasis added), but in this case it is so obvious that the girl has no reason to add material and a cogent explanation given for her delay.

Further in the case of **Bandara vs State (221) 2 SLR 63** it was held that “if there is valid reason or explanation for the delay and if the trial judge is satisfied with the reasons and explanations given, no trial judge would apply the test of spontaneity and contemporaneity and reject the testimony of a witness in such circumstances”

The victim was schooling at the time of the incident. She had given a birth to a child of this Appellant. She had revealed this incident only after the child birth. On oath she had categorically stated that she did not reveal the incident earlier due to sheer fear.

When considering her age marital status and background, the omissions pertaining to her statements are reasonably justified.

The Learned High Court judge who had the opportunity of watching her giving evidence had observed her credibility and he was satisfied that she was a credible witness.

Therefor when considering the above it is abundantly clear that omissions and delays on the part of the prosecutrix have been adequately explained. Medical evidence corroborates the version of the prosecutrix. Therefor there is no reason to interfere with the findings of the learned High Court Judge and thereby we affirm the conviction and the sentence.

Hereby the Appeal is dismissed.

Judge of the Court of Appeal

P.R.Walgama, J

I Agree

Judge of the Court of Appeal