

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

Ranjith Wijesuriyage Pradeep

Janaka Kumara

Appellant

CA Appeal No: CA 161/2018

Vs.

HC Anuradhapura Case No: 295/2006

Hon. Attorney General

Attorney General's Department,

Colombo 12.

Respondent

Before : Menaka Wijesundera J.

B. Sasi Mahendran J.

Counsel : Indika Mallawaratchy for the Accused- Appellant.

Sudarshana De Silva, SDSG for the Respondent.

Argued on : 12.12.2023

Decided on : 17.01.2024

MENAKA WIJESUNDERA J.

The instant appeal has been lodged to set aside the judgment dated 18.07.2018 of the High Court of Anuradhapura.

The accused appellant had been indicted for gang rape under the provisions of the Penal Code. Upon the conclusion of the trial the appellant had been convicted for the charge of gang rape.

The main ground of appeal raised by the Counsel for the appellant is identification of the appellant by the victim.

Their version of the prosecution is that the victim had been living with her paramour and on the day of the incident when they had gone to sleep the front door had been forced open and the house had been in darkness and the victim had held the torch to the faces of the appellant and the others and then her torch light had been grabbed and she had been raped by four persons and out of which the appellant had been identified by the name Kumara because she had spoken to him before.

But in her cross examination she had said that she had identified the appellant from the voice and she had not spoken to him during the incident and even prior to the incident she had spoken to him only twice which the Counsel for the appellant claimed was not sufficient identification.

At pages 82. 83.84 Of the case record she had said that she identified the appellant from the voice and at one point she says that she was not very sure.

Hence the Counsel for the appellant stated that it is very unsafe to act on her evidence because she had been the sole eye witness and her paramour although at home at that time had been blind folded by the assailants.

The learned judge had referred to the evidence of the prosecution and also had addressed his mind to the subject of identification but we observe he had failed to consider the doubtful nature of the evidence of the victim with regard to the identification in the cross-examination and in examination – in-chief.

At this point we draw our minds to the fact that the victim had known the appellant before but it had not been a friendship or anything that serious but it had been something of a familiarity.

At this point we refer to the case of SC (SPL) Appeal 7/2018 by his Chief Justice Jayantha Jayasuriya in which he had held that “the process of identification of a person who is known to a witness by name or otherwise is described as recognition as opposed to identification. Situations of recognition are considered more satisfactory than instances of identification. However even in situations of recognition the Court should

analyze evidence of the witness who claims that the accused is a known person and examine whether the evidence is satisfactory to bring home a conviction”.

Hence in the instant matter the encounters of the victim with the appellant appear to be very brief and limited to a few words and during the incident the appellant and the victim had not exchanged any words, as such the victim could not have had a chance to identify the appellant by voice.

As such we are compelled to agree with the Counsel for the appellant that identification of the appellant at the time of incident was not sufficient.

Another point urged by the Counsel for the appellant was that although the victim had alleged that she had been raped by four people the doctor had not observed any injuries on the victim which she submitted was rather strange.

This Court also having considered the medical evidence is of the opinion that the victim had been subjected to rape by four persons and it is not with consent if that is so the absence of a single injury on the victim casts a serious doubt with regard to the credibility of the victim's evidence.

At the conclusion of the case for the prosecution the appellant has made a statement from the dock and had denied the entire incident but we do not want to consider the dock statement because it is the prosecution which has to prove its case beyond a reasonable doubt and in the instant matter the identification of the appellant is seriously challenged, which we have held above has created a reasonable doubt in the case for the prosecution.

Hence we hold that there is merit in the submissions of the Counsel for the appellant and that it is unsafe to act on the evidence of the prosecution.

As such the instant appeal is allowed and the conviction and the sentence of the appellant is hereby set aside.

JUDGE OF THE COURT OF APPEAL

Hon. Justice B. Sasi Mahendran

I agree.

JUDGE OF THE COURT OF APPEAL