

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

Seepadalage Sumathipala,
Akarella, Ihala Udagama,
Openayake.

Accused-Appellant

**C.A. No. 136/2010
H.C. Ratnapura
Case No. 02/2009**

Vs

Republic of Sri Lanka.

Respondent.

C.A. No. 136/2010

H.C. Ratnapura Case No. 02/2009

Before : Ranjith Silva, J. &
H.N.J. Perera, J.

Counsel : Dharmasiri Karunaratne for the Accused-Appellant.

Rohantha Abeysooriya, SSC, for the A.G.

Argued &
Decided on : 20.03.2012.

Ranjith Silva, J.

Accused appellant is present in Court brought in custody.
Heard Counsel for and against this appeal respectively.

The accused-appellant was indicted on 3 counts in the High Court of Ratnapura; for statutory rape coupled with incest under Section 364 A(3)(a) of the Penal Code No. 22 of 1995. The accused-appellant was found guilty in respect of all three counts and was sentenced to 15 years rigorous imprisonment on each count to run consecutively. In addition he was fined Rs. 45,000/= in default 1 year rigorous imprisonment. This appeal is preferred against the said convictions and the sentences. At the stage of arguments before us Mr. Karunaratne Counsel for the Appellant took up four grounds of appeal namely that there was duplicity of charges, that there was no corroboration of the story of the victim, that the evidence of the victim was not credible and fourthly that the dock statement made by the accused appellant has not been properly evaluated. In addition to that the Counsel also urged that the victim has falsely implicated the accused appellant. With regard to 1st ground 'duplicity' we find that the

charge reads as follows; the accused committed the offences within a period of 8 months commencing from the 1st of February 2006 to 31st of October 2006. This is permissible under Section 174 of the Criminal Procedure Code. At a glance one would wonder whether all these charges were the same. But we find that in the 2nd count, the second incident has been separated from the 1st count and that has been expressly stated so in the second charge. The 3rd charge is completely different and it is a separate and distinct one from the first and the second. There had been such sexual acts performed, according to the victim, on more than three occasions but since the section permits only the amalgamation of three offences at a time the prosecution has included only 3 charges on the indictment.

According to the evidence of the victim she specifically remembered the last act and that is how she could remember the first incident which happened 8 months prior to the last act. It is on that footing the prosecution was able to calculate the time gap. The joining of the charges, in our opinion has not caused any prejudice whatsoever to the accused appellant in his defence.

We find that the Counsel for the accused appellant has made an attempt to attack the credibility of the witness. Regarding the issue of belatedness of the complaint explanations are recorded in her evidence found at pages 59 and 72 of the brief. When she was questioned as to why she did not mention this to anybody promptly she had said that by doing so she feared that she may upset and disrupt the affair she was carrying on with her boy friend as she feared that her boy friend would foist the blame on the accused appellant (father) and desert her. When she was questioned as to why she did not inform the police in time she had said that her father the accused appellant was the sole bread winner and were very worried that they will be deprived of their lively hood. When the victim gave evidence she was questioned as to why she did not complain to the police promptly she explained that her mother told her that if she did so there was no one to look after them, as their father was the sole bread winner. These explanations cannot be refuted and are reasonable and logical explanations. (Vide. *Ajith Samarakoon Vs The Republic* 2004 (2) S.L.R Page 209 at page 220 and *Paulin de Croose Vs The Queen* 71 N.L.R 169.) On the other hand we find not a single contradiction or omission marked in her evidence. In other words this witness had

been steadfast and unshaken in her evidence and could be considered as a genuine and a truthful witness. The learned High Court Judge had put so many questions to the victim and finally decided that the victim was a credible witness.

With regard to the ground of appeal that there was no corroboration we would like to refer to the following two cases.

Bhoginbhai Harijibhai Vs. State of Gujarat 1983 Criminal Law Journal 1983 A.I. R SC. 753 .

In Guncharan Singh Vs State of Haryana A.I.R. 1972 SC 2661 wherein Their Lordships of the Indian High Courts have held that to seek for corroboration as an essential feature is adding insult to injury. Corroboration is not the sine qua non for a conviction in sexual offences. On the other hand we find that there is medical evidence corroborating the evidence of the victim. With regard to the fact that the accused appellant had been falsely implicated we observe that despite the risk of losing her boyfriend in complaining to the police and dispute the fact that they would lose their sole bread winner she had complained to the police. We find that there is no reason for a

daughter to falsely implicate her own father. It would be a stigma to the entire family and the people of that village would ostracize them. We find that there is no merit in any of the grounds of appeal. It is worthy at this stage to consider the ground of appeal that the dock statement made by the accused appellant was not evaluated properly. We find that the dock statement has to be evaluated in the light of the totality of evidence and should not be compartmentalized. The dock statement should not be compared with the evidence of the prosecution and the dock statement should not be considered as inferior evidence. In considering the dock statement one has to be mindful that if the dock statement is neither accepted nor disbelieved still if it is sufficient to create some doubt the benefit of the doubt should be given to the accused appellant. What is important here is to consider the dock statement in the light of the totality of the evidence and it cannot be considered by compartmentalizing the dock statement. In this regard I would like to refer to the judgment of Justice Rodrigo in *James Silva Vs. Republic of Sri Lanka* 1980 – 2 S.L.R. 167 and the decision in *Kamal Addaraarachchi Vs The State* 2002 1- S.L.R. 312.

In view of all these circumstances and the reasons we have enumerated in the foregoing chapters of this judgment we affirm the conviction and the sentences and dismiss the appeal.

JUDGE OF THE COURT OF APPEAL

H.N. J. Perera, J

I agree.

JUDGE OF THE COURT OF APPEAL

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