

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

Sapinge Wimalasena alias Bandara
Accused-Appellant

Vs

CA 162/2009
HC Anuradhapura 82/2005

The Attorney General.

Respondent

Before : Sisira de Abrew J &
PWDC Jayathilake J

Counsel : Anil Silva PC with NM Saheed and N Godaellawatte
for the appellant.
Dileepa Peiris SSC for the Respondent.

Argued on : 18.02.2013
Decided on : 14.3.2013

Sisira de Abrew J.

The accused appellant in this case was convicted for raping a woman named Kusumawathi and was sentenced to term of ten years rigorous imprisonment and to pay a fine of Rs.20,000/- carrying a default sentence of 2 ½ years imprisonment. Being aggrieved by the said conviction and the sentence the he has appealed to this court. Facts of this case may be briefly summarized as follows:

On the day of the incident (30.3.97) around 12 noon the accused appellant who was living in the neighbourhood of the prosecutrix came to the compound of

the house of the prosecutrix and made inquiries whether her husband was at home. When she replied him in the negative he dragged her inside home and raped her. In protest she shouted and struggled with him but he committed the act of rape. In the struggle she passed stools. After the act of rape the accused appellant dragged her near the tube well in the garden. Then Sophia, a woman living in the neighbourhood, intervened and separated both. Then she addressed Sophia in the following language: "All what he could do was done to me." She showed her injury on the leg. She says that she sustained injuries on her breast and left ear as a result of the accused appellant biting her when he was committing the act of rape. After the incident she with her infant child went and met her husband and told him that the accused appellant caused injuries to her. She says that she did not tell her husband about the rape incident at this time as there were people at the place where her husband was working. She thereafter went and lodged a complaint at the Police Station. She, at the hospital, told her husband about the incident of rape. This was the summary of the evidence of Kusumawathi (the prosecutrix). The main contention of learned President's Counsel was that the prosecution had not proved penetration which is an essential ingredient in a charge of rape. He brought to our notice what the doctor who examined the prosecutrix had written in the short history. The doctor has written the following words in the short history. "Raped by a known person called Bandara on 30.3.1997 at 1.00p.m, when she was at home with an adopted child. She did not know whether penis inserted into the vagina. Stools passed when she was fighting with the man." Learned PC harping on the sentence: "she did not know whether penis inserted into the vagina" contended that the prosecution had failed to prove penetration. But the doctor in the MLR concluded that there was evidence of recent vaginal penetration. Therefore the above sentence in the short history has not weakened the evidence of penetration.

Kusumawathi the prosecutrix in her evidence said that she felt as if she was behaving sexually with her husband. This clearly indicates that the accused appellant had inserted his penis into her vagina. After she gave the above answer learned prosecuting State Counsel had asked the following question.

Q. Did you feel a penis being inserted?

A. Yes.

Learned PC contended that this was a leading question. But this question was asked she, in the previous answer, had said that she felt as if she was behaving sexually with her husband. I therefore hold that no prejudice caused to the accused by the said question.

The doctor says that abrasion in the labia minora was consistent either with scratching or colliding with an object. Kusumawathi admitted that she scratched her vagina as she was suffering from an urine infection. According to the doctor there was an abrasion on the chest, contusion on the knee joint, bite marks on left breast and right breast and left ear. Kusumawathi says that she sustained injuries whilst she was struggling with the accused appellant. Thus this part of the evidence of the victim is corroborated by medical evidence. She made a complaint to the police soon after the incident. No contradiction or omission was marked with her statement made to the police. Thus her evidence satisfies the test of promptness and consistency. When I consider all these matters I felt that her story is true. If court feels that she has spoken the truth her evidence can be acted upon even without corroboration. This view is supported by the judicial decision in Premasiri Vs Queen 77 NLR 86 wherein Court of Criminal Appeal held thus: "In a charge of rape it is proper for a jury to convict on the uncorroborated evidence of the complainant only when such evidence is of such character as to convince the jury that she is speaking the truth."

When I consider all these matters I am unable to agree with the contention of learned President's Counsel that the prosecution had not proved the penetration. In my view the prosecution had proved penetration.

I have considered the evidence led at the trial. I am of the opinion that there are no grounds to interfere with the judgment of the learned trial judge. I therefore affirm the conviction and the sentence and dismiss the appeal.

Judge of the Court of Appeal.

PWDC Jayathilake J

I agree

Judge of the Court of Appeal.