

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

Parana Palliyage Ajith,
Sirithilaka Mawatha,
Weliwatte,
Ahangama.

Accused-Appellant

C.A.Appeal No.127/2009
H.C.Galle No. HC 2547/2005

vs.

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

Respondent

Before : **Sisira de Abrew, J.**
P.W.D.C.Jayathilake, J.

Counsel : Jagath Abeynayake for the Accused-Appellant
Shanil Kularatne SSC for the Attorney-General.

Argued &
Decided on : 28.02.2013

Sisira de Abrew, J.

The accused-appellant produced by Prison Authorities is present in
Court.

Heard both Counsel in support of their respective cases.

The accused-appellant in this case was convicted for raping a girl named Ruwini Kumari who was under 16 years of age. Learned trial Judge sentenced him to a term of 15 years rigorous imprisonment, to pay a fine of Rs.10,000/- carrying a default sentence of 3 years simple imprisonment and to pay a sum of Rs.150,000/- as compensation to the victim carrying a default sentence of 5 years simple imprisonment. Being aggrieved by the said conviction and sentence the accused-appellant has appealed to this Court. The facts of this case may be briefly summarized as follows:-

The accused-appellant who was having a love affair with the victim in this case, on day of the incident, came to the house of the victim and committed sexual intercourse on her. The victim was under the age of 16 years at that time. She admitted that she consented to the act of sexual intercourse. Since the victim was under 16 years of age, proving the fact that sexual intercourse was done without her consent is not necessary. The accused-appellant in his evidence denied the incident.

The only point raised by the learned Counsel for the appellant is that the prosecution evidence cannot be relied upon since there was a delay in making her statement to the police. The delay was about 7 days. She has not been questioned at the trial about the delay. After the incident, she has consumed medicine that had been given to her grand mother. As a result of consuming the said medicine she started vomiting and was later admitted to the hospital. She has discharged from the hospital after three days. When we consider the evidence it is correct to say that there was a delay of about 7 days in making a statement to the police. But should the Court disregard her evidence on the basis of delay?. We note that her evidence has been corroborated by medical evidence. I now advert to this position. According to the medico legal report there was a tear in her hymen. According to the doctor there was evidence suggesting recent penetration and this penetration has taken place within 10 days of the examination by the doctor. Thus, it is clear that the evidence of the victim has been corroborated by the medical evidence. In these circumstances, I feel that the delay in making a statement to the police is not vital and that the delay has not shaken the truthfulness of the story. I therefore reject the submission of the Counsel for accused-appellant that the evidence of the victim cannot be relied upon on the ground of delay. Soon after the act of rape the accused has slapped her and said that he would not marry her. He has further requested her to jump into a train. We have considered the evidence in this case. In our opinion, the prosecution has proved the case beyond reasonable doubt. We therefore affirm

the conviction. We note that the default sentence imposed by the learned trial Judge in respect of non payment of the amount of compensation (Rs.150,000/-) is illegal. According to Section 364(4) of the Penal Code as amended by Act No.22 of 1995 the maximum default sentence that can be imposed in respect of non payment of compensation is 2 years. But the learned Trial Judge has imposed default sentence of 5 years. We set aside the said default sentence of 5 years in respect of the non payment of compensation and impose 2 years imprisonment in default of amount of compensation (Rs.150,000/-). Learned trial Judge has imposed 3 years default sentence in default of the fine of Rs.10,000/-. The maximum default sentence that can be imposed in respect of non payment of compensation is 2 years. Therefore imposing a default sentence of 3 years in respect of non payment of the fine of Rs.10,000/- is unreasonable. We therefore set aside the said default sentence of 3 years as well and impose a default sentence of six months imprisonment in respect of the non payment of the fine of Rs.10,000/-. We affirm the term of fifteen years rigorous imprisonment imposed by the learned trial Judge.

Both Counsel admit that the accused-appellant has not been released on bail after conviction. We direct the Prison Authorities to implement the sentence from the date of conviction (01.04.2009)

Learned High Court Judge is directed to issue a fresh committal indicting the sentence imposed by this Court.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

P.W.D.C.Jayathilake, I

I agree.

JUDGE OF THE COURT OF APPEAL

KLP/-