

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

Geekiyanage Sunil Padmasiri de Silva
Accused-Appellant

Vs
The Democratic Socialist Republic of Sri Lanka
Complainant Respondent

CA 197/2010
HC Negombo 272/2006

Before : Sisira J de Abrew J &
PWDC JayathilakeJ
Counsel : Anil Silva President's Counsel for the accused appellant
Sarath Jayamanne DSG for the Respondent.

Argued on : 11.3.2013 and 12.3.2006
Decided on : 9.5.2013

Sisira J de Abrew J.

The accused appellant in this case was convicted for kidnapping a girl named Weerasinghege Pradeepa Nilmini who was under sixteen years of age and raping her. He was, on the first count, sentenced to a term of two years rigorous imprisonment (RI) and to pay a fine of Rs.2,500/- carrying a default sentence of three months simple imprisonment. On the 2nd count, he was sentenced to a term of ten years RI, to pay a fine of Rs.5000/- carrying a default sentence of six months simple imprisonment and to pay a sum of Rs.30,000/- as compensation to the Prosecutrix carrying a default sentence of one year RI. The learned trial Judge directed that two terms of imprisonment imposed on two counts (two years RI and

ten years RI) should run consecutively. Facts of this case may be briefly summarized as follows: Susantha Jayalath who is the mother of the prosecutrix around 3.30 p.m. dropped her daughter (the prosecutrix) at her English tuition class which was close to the communication center run by the accused appellant. Before commencement of the tuition class, the accused appellant came and told the prosecutrix that her father wanted her to come home for the purpose of preparing decoction for father's ailment. She thereafter got into the van of the accused of the accused appellant and he without taking her to her house took her to his house which was about fifteen meters away from her house. Thereafter he removed her clothes and committed the act of sexual intercourse on her. At this time her mother came and knocked on the door of the house of the accused appellant. Thereafter he opened the rear door of the house, allowed her to go to the back yard and helped her to jump over the wall. She jumped to the neighbouring land of the accused appellant, came to the road and met her mother who was waiting near the house of the accused appellant. This was the summary of the evidence of the prosecutrix.

Mother of the prosecutrix says around 3.30.p.m. she went to the compound of the accused appellant and demanded that door be opened. She also demanded the accused appellant to release her daughter. She says even windows were closed. She found her daughter's bag containing books inside the van of the accused appellant. Little later she met her daughter who said that the accused appellant brought her to the house. Before she met her daughter she had given a telephone call to the police station and as a result of this telephone call two police officers arrived at the scene. The accused at this stage came from the rear side of the house.

The accused appellant too gave evidence. He says that whilst he was passing the tuition class of the prosecutrix in his van, she signaled her to stop the van and requested him to drop her at the computer class. He however told her that he had to first get back home as it was necessary for him to take hot water and

clothes for his son who was in the hospital. He thereafter drove his van taking the prosecutrix in his van and stopped it in his compound. He went inside the house to bring hot water and clothes for his son whilst she was waiting in the van. When he was pouring hot water to the hot water flask he heard the victim shouting in the following language: "Sunil aiya, mother is coming." He thereafter saw the girl jumping over his wall which was 4 ½ feet high. When he opened the door, he found the mother of the girl with two police officers at the door step.

Learned PC for the accused appellant contended that the accused appellant should have been acquitted on his evidence. I now advert to this question. The accused appellant in his evidence admitted that he took the prosecutrix in his van to his compound. His idea was to drop her at the computer class. When he was at home he heard the prosecutrix saying "Sunil aiya, mother is coming." He also saw her jumping over his wall. He admits her mother knocking on the door. When he opened the door he saw the mother with two police officers. Under these circumstances, if he brought the prosecutrix for the purpose of dropping her at the computer class on her request, should not he have disclosed this purpose to the mother. Normal reaction of a human being under these circumstances was to disclose the purpose for which he brought the prosecutrix home. He must promptly disclose it. But there is no evidence to suggest that he disclosed this purpose to the mother. I am therefore unable to accept his evidence. In my view his evidence does not satisfy the test of probability. If he did not come home with the prosecutrix this incident would not have taken place. Why did he come home in that afternoon? That was to take hot water and clothes to his son who was in the hospital. When one considers the allegation levelled against him this reason was important and he could not forget it. But he had not stated this reason in his statement made to the police. This was brought to the notice of the trial court by way of an omission. This omission in my view is a vital omission. Therefore the reason for coming home

with the prosecutrix stated in his evidence appears to be an afterthought. When I consider these matters, the evidence of the accused that he did not take her inside the house and did not commit the sexual intercourse on her and that he brought her home with the intention of dropping her at the computer class cannot be accepted and is not capable of creating a reasonable doubt in the prosecution case. In my view the learned trial judge was right when decided not to act on the evidence of the accused appellant.

The distance between her house and the accused appellant's house was, according to the evidence, only 15 meters. In between both houses was only a petrol shed. Learned PC contended that the prosecutrix wanted to keep away from the English tuition class and this was why she came with the accused appellant. If this contention is true, I have to ask the question: would she come close to her house taking the risk of being seen by her parents if she wanted to keep away from the tuition class. I think not. I am therefore unable to agree with the said contention of learned PC.

Learned PC next contended that Prosecution had not proved the penetration and that therefore accused could not have been convicted for the offence of rape. I now advert to this contention. According to the doctor there may or may not have been penetration. The prosecutrix told her mother that nothing happened to her although the accused appellant removed her clothes. I must note here that the prosecutrix was, at this time, having guilty conscious as she came from the neighbouring land of the accused appellant. She was expected to be at the tuition class. Under these circumstances it was natural for her to say at the first instance especially on the road that nothing happened to her. The prosecutrix, in her evidence, says that the accused appellant kept his male organ near her vagina and moved up and down. She says that she, at this time, felt pressure near her vagina and she found his male organ inside her vagina. This was the evidence of the

prosecutrix. When I consider all these matters, I hold the view that the prosecution had proved penetration beyond reasonable doubt. The fact that the prosecutrix was in the compound of the accused appellant and the fact that she jumped over the wall of the accused appellant's land were even admitted by the accused. When I consider the evidence led at the trial I feel that she had spoken the truth at the trial. Therefore her evidence can be accepted even without corroboration. In a case of rape the accused can be convicted for the offence of rape on the evidence of the prosecutrix even without corroboration if she speaks the truth. I have earlier pointed out that she had spoken the truth at the trial. This view is supported by the judicial decision of Premasiri Vs The Queen 77 NLR 86 wherein the Court of Criminal Appeal held thus: "In a charge of rape it is proper for a jury to convict on uncorroborated evidence of the complainant only when such evidence is of such character as to convince the jury that she is speaking the truth."

Lerned PC next contended that the offence of kidnapping had not been proved as the accused appellant was going to drop the girl at a tuition class. But I have earlier rejected his evidence. Therefore I am unable to accept the contention of learned PC. In my view the learned trial judge was correct when he convicted the accused appellant on both counts. There is no reason to interfere with the judgment of the learned trial judge. For the above reasons I affirm the convictions and the sentences of the accused appellant and dismiss the appeal.

Appeal dismissed.

Judge of the Court of Appeal.

PWDC Jayathilake

I agree.

Judge of the Court of Appeal.