

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

PL Duminda Gunawardene  
**Accused-Appellant**

Vs  
The Democratic Socialist Republic of Sri Lanka  
**Complainant Respondent**

CA 100/2009  
HC Gampaha 27/ 2005

Before : Sisira J de Abrew J &  
PWDC JayathilakeJ  
Counsel : ASM Perera PC for the accused appellant  
Vijith Malagoda ASG for the Respondent  
Argued on : 10.5.2013 and 17.5.2013?  
Decided on : 25.7.2013

**Sisira J de Abrew J.**

The accused appellant in this case was convicted for raping a girl under sixteen years of age named Jayakumari Priyadarshani and was sentenced to a term of ten years rigorous imprisonment (RI), to pay a fine of Rs.5000/- carrying a default sentence of six months RI. Being aggrieved by the said conviction and the sentence he has appealed to this court. Facts of this case may be briefly summarized as follows. The accused appellant was a navy officer and his wife was a nurse attached to a private hospital. Priyadarshani was brought by the accused appellant to his house to work as a servant. Her duty was, among other things, to look after

the baby of the accused appellant. She was given a room adjoining to the room of the couple (the accused appellant and his wife). The baby also sleeps in her room when the mother is not at home. One day when Priyadarshani was sleeping in her room she felt that her clothes being removed. When she woke up she saw the accused appellant near her. When she shouted the accused appellant kept a pillow on her face and pressed and as a result of this action she fainted. She found blood on her clothes when she regained consciousness. The wife of the accused appellant was not at home as she was on night duty in the hospital. She can't remember the date or month of the incident. But she has told the doctor who examined her on 20.11.98 that the date of the incident was 11.10.98. The accused appellant, in his evidence, whilst denying the charge of rape, says that he went to naval base at Trincomalee on 10<sup>th</sup> of November 1998 (not 11.10.98). She says that the accused appellant again on a certain day (she can't remember the date again), when his wife was on night duty, committed sexual intercourse on her against her will. According to her one week after this incident the accused appellant left for Trincomalee. Since the accused appellant has admitted that he, on 10.11.98, went to Trincomalee the above date spoken to by Priyadarshani should be 3.11.98. According to her evidence this was the second date that he committed sexual intercourse on her. She says that the accused appellant committed sexual intercourse on her only on two occasions. The charge against the accused appellant is that he, on 11.10.98 raped her. He is not charged with two incidents of rape. After the accused appellant left for Trincomalee, she, on a certain day, (again she can't remember the date) told the wife of the accused appellant about the rape incident. The wife of the accused appellant thereafter hit her head against the wall and threw her out of the house. As a result of this act she sustained a bleeding injury on her head. On the way she met a woman on the road and when asked for directions to go to Nittambuwa police station, she (woman) took the girl to her house after advising not to go to the police

station. Priyadarshani stayed in this house for four days and ultimately her parents found her in the woman's house. Priyadarshani and her parents went and lodged a complaint at Gampaha police station on 18.11.98. Thus the estimated date that she was thrown out of the house appears to be 14.11.98. The indictment alleges that the accused appellant raped her on 11.10.98.

Doctor Dharmarathne who examined her on 20.11.98 found her hymen widely open and old scars on the hymen. There were no fresh injuries on the hymen. According to the doctor the injuries that relate to the scars would have taken place on any day prior to one month from the date of examination. He further says that she had gone through sexual intercourse on several times. The VOG who examined her too says that her vaginal orifice was widely open and that she had undergone sexual intercourse on several times (pages 170-172). This VOG who was called by the defence said that there were no fresh injuries. According to Priyadarshani the accused appellant committed sexual intercourse only on two occasions and prior to this experience she had not had sexual intercourse. Learned prosecuting State Counsel who was aware of this evidence did not ask both doctors, if Priyadarshani had gone through sexual intercourse only twice, whether symptoms observed by them were compatible with such history. However both doctors expressed the opinion that she had gone through sexual intercourse on several occasions. How can the court decide that two occasions of sexual intercourse equal to several occasions of sexual intercourse in the absence of medical evidence on this point. Dr. Dharmarathne says that injuries relating to the scars could have taken place on any day prior to one month of the medical examination. Thus injuries could have taken place even prior to 11.10.98 or prior to her coming to this house. It is therefore seen that the medical evidence does not support or confirm or strengthen the evidence of Priyadarshani. Corroboration in a case of rape means some independent evidence which confirms or supports or

strengthens the victim's evidence. This view is supported by the judicial decision in the case of Fernando Vs Republic 79(ii) NLR page 313 at page 397 wherein Justice Vaithyalingam held thus: "In our law of evidence corroboration is a term which has a special significance. In the conventional sense as used in our courts it means other independent evidence which confirms or supports or strengthens the evidence which is required to be corroborated." I have earlier pointed out that the medical evidence does not support or confirm or strengthen the evidence of Priyadarshani. Therefore it is clear that the medical evidence does not support the evidence of Priyadarshani. But the learned trial judge without giving adequate consideration to the above matters, has wrongly concluded that the medical evidence supported the evidence of Priyadarshani.

It was the position taken up by Priyadarshani in her evidence that after she told the incident of rape to the wife of the accused appellant, she (wife of the accused appellant) hit the head of Priyadarshani against the wall and as a result of this assault she sustained a bleeding injury on her head. She, in her evidence, does not give the date of this assault. But the estimated date, as I pointed out earlier, is 14.11.98. Did the doctor who examined her on the 20<sup>th</sup> of November find any injury on the head? This question has to be answered in the negative. Then part of her evidence becomes false. I therefore begin to doubt her story.

She was in the house of the woman whom she met on the road from 14.11.98 to 18.11.98. One would expect her to go to the hospital during this period as she was suffering from an injury on the head. But she did not do so. During this period she was free to go to the police station to lodge a complaint on two matters. One is against the wife of the accused appellant for causing an injury on her head. The other one is against the accused appellant for raping her. But she did not do so. It must be considered whether it was possible for her to go to the police station as she was an outsider to this area. But the woman whom she met on the road has

given her shelter during this period (from 14.11.98 to 18.11.98). Thus she could have easily obtained her assistance to go to the police station and the hospital. The name of this woman never surfaced at the trial. When I consider these matters serious doubts are created on the truthfulness of her story. It is interesting to note the evidence of the wife of the accused appellant on this point. She says when she came home on 14.11.98 around 2.30 p.m. she found Priyadarshani missing from home and her small child sleeping. After searching for the girl, she on 15.11.98 lodged a complaint at Weeragula police station about Priyadarshani leaving home. IP Nimal Rathnayake from Weeragula police station, in his evidence, confirmed the making of the complaint by the wife of the accused appellant. On 18.11.98 parents of Priyadarshani with Priyadarshani came to the house of the accused appellant and she with them went to Weeragula police station. She withdrew the complaint as she had found the girl. IP Nimal Rathnayake confirmed the withdrawal of the complaint and further stated that Priyadarshani was handed over to her parents after obtaining a statement of her father. Did the complaint of rape surface at Weeragula police station? According to IP Nimal Rathnayake no such complaint had surfaced at Weeragula police station. If there was an incident of rape as alleged by Priyadarshani on 11.10.98 and in the month of November (she does not give a date and estimated date is 3.11.98) why didn't her parents make such a complaint to Weeragula police station. This question remains unanswered. At this stage one must not forget that Priyadarshani was handed over to her parents by Weeragula police after obtaining a statement from her father. Thus if there was an incident of rape isn't it natural for him to make the complaint in the same statement to the effect that his daughter had been raped. This behaviour of the Priyadarshani and her parents creates a serious doubt in her story. Although they did not make a complaint of rape to Weeragula Police station, later around 8.40 p.m. Priyadarshani made a complaint of rape to Gampaha police station against the

accused appellant. This was the 1<sup>st</sup> complaint made against the accused appellant. IP Nimal Senanayake from Gampaha police station, in his evidence, says that according to this complaint she had been raped by the accused appellant only on 18.11.98. At this stage it is pertinent to note that the demand made by the parents of Priyadarshani on 18.11.98. According to the wife of the accused appellant, they, after coming from Weeragula police station, demanded Rs.50,000/- from her. When it was refused, father of Priyadarshani had said he knew how to get Rs.100,000/- It appears from the evidence that a complaint of rape had been made only after their demand for Rs.50,000/- was refused. Question has to be asked again as to why a complaint of rape was not made at Weeragula police station if she was raped either on 11.10.98 or 18.11.98. This question remains unanswered.

Could the accused appellant have committed any act of sexual intercourse on Priyadarshani on 18.11.98? The answer is obviously no because on this day she was not in the house accused appellant. This clearly demonstrates the falsity of the story of Priyadarshani. From the above evidence one important matter could be noted. What is it? That is Priyadarshani even in the company of her parents did not make a complaint of rape to Weeragula police station on 18.11.98. I begin to doubt her story seriously when I consider these matters. In my view her story does not satisfy the test of probability. What prompted Priyadarshani, who did not make a complaint of rape to Weeragula Police station on 18.11.98, to make a complaint of rape to Gampaha police station in the night of 18.11.98? Was it the failure of her parents to obtain money from the wife of the accused appellant? The learned trial judge has unfortunately not considered these matters.

Why didn't Priyadarshani or her parents make a complaint to Weeragula police station on 18.11.98 when the Weeragula police handed over to her parents at Weeragula police station and later decided to lodge a complaint of rape at Gampaha police station in the night alleging that she was raped on 18.11.98? Is it

because that there was no incident of rape by the accused appellant and that they were trying to take advantage of a previous sexual assault by someone? In this connection it is relevant to consider the short history given by her to Dr. Dharmarathne. She has told Dr. Dharmarathne that Mudalali in the house on 11.10.98 raped her. Who is this Mudalali? Priyadarshani says that she knows the accused appellant as a person who works in the Army (the accused appellant is a navy officer). Thus can Priyadarshani say that the man in the house is a mudalali? Certainly she could have referred to the accused appellant as Army Mahaththaya (gentleman in the Army). The said reference in the short history when considered with the observation that I have made earlier creates doubts in her story.

There is another matter that should be considered. Priyadarshani says that she was raped twice. But to the doctor she has told that she was raped on 11.10.98. In the short history she has not stated that she was raped twice. There is also another matter that should be considered when deciding the truthfulness her story. If she was raped on 18.11.98 as alleged by her in her first complaint, Dr. Dharmaratne who examined her on 20.11.98 would have found fresh injuries. But no such fresh injuries were found. This shows that her stand taken up in the first complaint is false. I have earlier stated that there are serious doubts in her story. In a case of rape if the story of the prosecutrix is false, no useful purpose will be served by looking for corroboration because corroborative evidence cannot make a false story a truthful one. This observation, in my view, applies to the facts of this case.

I have earlier pointed out that her evidence had not been supported by medical evidence. Further her evidence has not been corroborated by any other evidence. In a case of rape it is dangerous to convict an accused on an uncorroborated testimony of the woman. One of the reasons is that the charge of

rape is the easiest charge that a woman can make against man in this world. There are reasons for this contention. Some of them may be set out below:

1. A woman can take advantage of a previous sexual intercourse which she had with somebody in order to grab money from the man against whom the allegation was being made when he had not done any sexual act to the woman.
2. A woman who willingly engages in sexual intercourse with a man can later claim it to be a case of rape when the sexual act is seen by a third party or when a close relation comes to know about the sexual intercourse.
3. A woman who willingly engages in sexual intercourse with a man can later claim that sexual intercourse was committed against her will when the promise given prior to sexual intercourse was not fulfilled.

In my view ground No.1 above applies to the facts of this case.

These are some of the reasons why it is dangerous to convict an accused in a case of rape on an uncorroborated testimony of the woman. But if she speaks the truth and gives convincing evidence, court can convict the accused on an uncorroborated testimony of the victim in a case of rape. This view is supported by the judgment of Justice Ranjith Dheerathne in the case of Sunil and others Vs the The Attorney General [1986] 1 SLR 230 wherein His Lordship held thus: "It is very dangerous to act on the uncorroborated testimony of a woman victim of a sex offence but if her evidence was convincing such evidence could be acted on even in the absence of corroboration."

The accused appellant in this case, in his evidence, denied the charge.

I have earlier held that there were serious doubts in the story of Priyadarshani and her story did not satisfy the test of probability. In my view it is very dangerous to act on her evidence. When I consider the above matters, I hold



the view that the prosecution has not proved its case beyond reasonable doubt. I therefore set aside the conviction and the sentence and acquit the accused appellant of the charge levelled against him.

*Appeal allowed.*

Judge of the Court of Appeal

PWDC Jayathilake

I agree.

Judge of the Court of Appeal.