

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

Y.M. Sene Banda,

Accused -Appellant

C.A. Appeal No. 83/2010

H.C. Kandy No. 193/2002

Vs.

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

Respondent

Before : **SISIRA J. DE ABREW, J. &**  
**P.W.D.C. JAYATHILAKA, J.**

Counsel : Nimal Muthukumarana for the Accused-  
Appellant.

Dilan Ratnayake S.S.C. for the Attorney  
General.

Argued &  
Decided on : 08.07.2013.

**Sisira J. de Abrew, J.**

Heard both counsel in support of their respective cases.

The accused-appellant in this case was convicted for kidnapping and raping a girl who was 16 years of age. He was, on the 1<sup>st</sup> count, sentenced to a term of 2 years rigorous imprisonment and to pay a fine of Rs. 2,500/- carrying a default sentence of three months imprisonment. On the 2<sup>nd</sup> count (charge of raping) he was sentenced to a term of 15 years rigorous imprisonment, to pay a fine of Rs. 5,000/- carrying a default sentence of six months imprisonment and to pay a sum of Rs. 75,000/- to the victim in this case carrying a default sentence of twelve months imprisonment. Being aggrieved by the said convictions and the sentence, the accused-appellant has appealed to this court.

According to the facts of this case, the accused-appellant met the victim Kumari who was returning from school. When the accused-appellant met the victim, he dragged the victim to nearby jungle and raped. Soon after the incident of rape, she went and complained to Anoma Puchi Kumari who was living in the neighbourhood of the victim. On the same day the victim went to the police station with

her father and made a complaint. Medical evidence corroborates the story of the prosecutrix. According to the doctor, there were several contusions and abrasions on her body. At the time of the examination, she was bleeding from the injury in the vagina. There was a fresh tear in the hymen.

Learned Counsel for the accused-appellant submits that there is sufficient evidence against the accused-appellant. He does not challenge the conviction. He makes an application to implement the sentence from the date of conviction and to give a direction that both sentence should run concurrently.

The accused, in his dock statement, denied the incident. At the time he made the dock statement, he was a 54 year old man. This was in 2009. According to the indictment the date of offence is 09.12.1997. Therefore at the time that the accused committed the offence, he was year a 42 year old man. The accused-appellant had raped a girl below 16 years age. According to the evidence at the time of incident she was a school going child.

When we consider these facts, we are unable to show any mercy to the accused-appellant, we direct the prison authorities to implement

the sentence from the date of this judgment. However we make an order that the 2 years rigorous imprisonment imposed on the 1<sup>st</sup> count and 15 years rigorous imprisonment imposed on the 2<sup>nd</sup> count should run concurrently.

We affirm the convictions and the sentence and dismiss the appeal.

*Appeal dismissed.*

**JUDGE OF THE COURT OF APPEAL**

**P.W.D.C. Jayathilaka, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL.**

/mds