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

C.A. 58/2012

HC Avissawella Case No. 214/2005

A.K.Suraweera,
Sirimedurawaththa,
Hettiyawaththa,

Meegoda.

Accused-Appellant.

Vs.

The Attorney General,

The Attorney's General Department,

Colombo 12.

Respondent.

BEFORE : Sisira J. de Abrew, J. &

P.W.D.C. Jayathilake, J.

COUNSEL : Amila Palliyage for the accused-appellant.

DSG Yasantha Kodagoda for the State.

ARGUED &

DECIDED ON: 23.07.2013

Sisira J. de Abrew, J.

Heard both counsel in support of their respective cases. The accused-appellant in this case was convicted for raping a woman named Purnima Manohari Pelapalgama and was sentenced to a term of 10 years rigorous imprisonment, to pay a fine of Rs. 5000/- carrying a default sentence of 2 months simple imprisonment and to pay a sum of Rs. 50000/- as compensation to the victim carrying a default sentence of 6 months simple imprisonment. Being aggrieved by the said conviction and the sentence he has appealed to this court.

The facts of this case may be briefly summarized as follows.

The prosecutrix in this case according to the doctor who examined her, was a mentally subnormal woman. On the day of the incident around 9.30 a.m. the mother of the prosecutrix left the house leaving the prosecutrix at home. Little later the accused-appellant whose brother was living in the neighbourhood of the prosecutrix came to her house dragged her to a room, put her on a bed and raped. Udeni

Kanchana who was passing the house of the prosecutrix at the time of the incident, on hearing the cries of the prosecutrix came to the house of the prosecutrix. The prosecutrix at this time told her that the accused-appellant raped her. People in the neighbourhood called the accused-appellant to the place and questioned about the incident. The accused-appellant at this stage tried to commit suicide by jumping into a nearby well. It has to be noted that when Udeni Kanchana came to the house of the prosecutrix she saw the accused-appellant leaving the house of the prosecutrix carrying a cassette radio in his hand. The doctor who examined the prosecutrix on the same day (11th March 2002) found a recent hymenal tare on the hymen of the prosecutrix. The doctor also noticed redness in the valva and redness on her chest. Doctor was of the opinion that there was recent vaginal penetration. The accused-appellant who gave evidence under oath denied the incident. The main ground of appeal urged by the learned counsel for the accused-appellant was that there was no reason to reject the evidence of the accused-appellant and that the learned trial judge has failed to consider whether there was any reasonable doubt created in the truth of the prosecution case as a result of the accused's evidence. The position taken up by the accused-appellant in his evidence was that

he went to the house of the prosecutrix in order to collect the outstanding money that the prosecutrix's mother had to pay as a result of the sale of land between the accused-appellant and the mother of the prosecutrix. According to him he went there to collect the outstanding amount. Learned prosecuting State Counsel had brought to the notice of Court that the accused-appellant has failed to mention the said fact in his statement made to the police. Although the accused-appellant in his examination in chief took up the position that he went to the house of the prosecutrix in order to collect the outstanding amount which I have stated earlier, he changed this position in the cross examination. The accused-appellant in the cross examination, said that he went to the house of the prosecutrix in order to collect some money from the prosecutrix. Thus his original position was contradicted by himself in the cross examination. The accused-appellant in his evidence stated that when he went to the house of the prosecutrix her brother was in the compound. But this position was not suggested to the prosecutrix when she was giving evidence. Learned trial judge having considered the said omission and contradictions decided to reject the evidence of the accused-appellant. In our opinion the conclusion reached by the learned trail judge to reject the

evidence of the accused-appellant is correct. When we consider said infirmities in the accused-appellant's evidence we are of the opinion that the accused-appellant's evidence does not create a reasonable doubt in the truth of the prosecution case. I am therefore, unable to agree with the contention raised by the counsel for the accused-appellant. According to the prosecutrix the accused-appellant at the time of the incident, had scratched her face and the legs. Learned counsel therefore contented that the story of the prosecutrix is not corroborated by medical evidence. I have to note here that the doctor has not been questioned whether there should be abrasions or injuries when the accused-appellant scratched the face and the legs of the prosecutrix. As the doctor has not been questioned on this matter it is not possible to say that the evidence of the prosecutrix has not been corroborated by the medical evidence on the said point. Was evidence of the prosecutrix corroborated by medical evidence? What is corroboration? Justice Waithyalingam in Feranando vs. Republic 1979 (ii) NLR page 313 at 397and 398 held thus;

"in our law of evidence corroboration is the term which has 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".

Has the evidence of the prosecutrix been strengthened by the medical evidence? The doctor who examined the prosecutrix on the same day has found a recent hymeneal tear in the vagina of the prosecutrix. Thus their evidence strengthens the evidence of the prosecutrix with regard to the incident of the rape. Applying the principles laid down in the above judicial decision I hold that the evidence of the prosecutrix has been corroborated by medical evidence. I have gone through the evidence laid at the trial and see no reason to interfere with the judgment of the learned trial judge.

Learned DSG made an application to enhance the sentence imposed by the learned trial judge. Learned counsel for the accused-appellant submits that the learned trial judge after exercising her judicial discretion has imposed an appropriate sentence. The sentence imposed by the learned trial judge is 10 years rigorous imprisonment.

When we consider the facts of this case we are of the opinion that we should not interfere with the sentence imposed by the learned trial judge. We affirm the conviction and the sentence and direct the Prison Authorities to

implement the sentence from the date of this judgment (today).

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

P.W.D.C. Jayathilake, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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