

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

Yahalawela Vidanalage  
Gunadasa Appuhamy,

Accused -Appellant

C.A. Appeal No. 66/2011

H.C. Embilipitiya No. 220/06

Vs.

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

Respondent

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

Counsel : Dr. Ranjit Fernando for the Accused-  
Appellant.

B. Aluvihare ASG, PC for the State.

Argued &

Decided on : 15.10.2013.

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

Heard both counsel in support of their respective cases.

The accused-appellant in this case was convicted for abducting and raping a woman named Sunethra Dayanganie. On the first count (charge of abduction) he was sentenced to a term of three years rigorous imprisonment and to pay a fine of Rs. 2500/- carrying a default sentence of three months simple imprisonment. On the charge of rape he was sentenced to a term of 10 years rigorous imprisonment, to pay a fine of Rs. 5,000/- carrying a default sentence of six months simple imprisonment and to pay a sum of Rs. 50,000/- as compensation to the alleged victim carrying a default sentence of 01 year simple imprisonment. The facts of this case as narrated by the prosecution witness may be briefly summarized as follows.

The accused-appellant in this case was known to the prosecutrix. Infact the accused-appellant was the attesting witness of the wedding of the prosecutrix and her husband. On the day of the incident around 11 p.m six people had entered the house and three of them dragged her out of the house. She identified the three people

as the accused-appellant and the 2<sup>nd</sup> and 3<sup>rd</sup> accused in the indictment. According to her she was raped by the accused-appellant. Although she claims that she was raped by the accused-appellant surprisingly she did not tell her husband as to who raped her. Her husband Podi Appuhamy in his evidence admitted that she even later did not tell him the name of the rapist. She admits in her evidence, that she did not tell the name of the rapist to the Police Officer who recorded her statement. In short, in her statement made to the police she had not told that the 1<sup>st</sup> accused raped her. She was examined by the Doctor on 2<sup>nd</sup> of November 2000 ( following day of the incident.) In the short history given by her to the doctor she has mentioned names of the accused-appellant's and the two accused as the person who entered her house. But she failed to state in the short history that the accused appellant raped her. What did she say in the short history? And unidentified person forced her to have sexual intercourse with him. According to the Doctor who examined her she had told that an unidentified person raped her. The accused appellant was known to her for about 10 years. If an unidentified person raped her it can't be the accused appellant who raped her. The above items of evidence clearly show that the prosecutrix had not identified the 1<sup>st</sup> accused as a person who raped her. This clearly shows that the identity of the accused-appellant has not been established by the prosecution beyond reasonable

doubt. The learned trial judge who convicted the accused-appellant has failed to consider these matters. We are unable to understand as to how the learned trial judge convicted the accused-appellant when this evidence was placed before her.

When we consider all the above matters, we hold that the prosecution had not proved its case beyond reasonable doubt. The Learned Additional Solicitor General, President's Counsel Mr. Aluvihare upholding the best traditions of the Attorney-General's Department admits that he is unable to support the conviction.

For the above reasons, we set aside both convictions and punishments imposed on the accused-appellant and acquit the accused-appellant.

We state here that the Commissioner General of Prisons is not entitled to keep the accused-appellant in his custody when he receives the judgment of this Court. It is not necessary for the Prison Authorities to produce the accused-appellant before the High Court Judge and get a release order. We direct the Commissioner General of Prisons to release the accused-appellant when he receives

the copy of this judgment. The Registrar of this Court is directed to send a copy of this Judgment to the Commissioner General of Prisons stating that this Court had set aside the conviction and acquitted the accused-appellant.

*Appeal allowed.*

**JUDGE OF THE COURT OF APPEAL**

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

I agree.

**JUDGE OF THE COURT OF APPEAL.**

/mds