

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

**CA.90/2012**

H.C.Gampaha No. 174/06

Madurapperumage Priyantha  
No: 01,  
Ranwala Devidugama,  
Meethisigala.

**Appellant**

**Vs.**

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

**Respondent**

**CA.90/2012****H.C.Gampaha No.174/06.**

**Before** : **Sisira J.De Abrew, J**  
**P.W.D.C. Jayathilaka, J**

**Counsel** : Isuru Somadasa for the Accused-  
Appellant.  
Yasantha Kodagoda DSG for the AG

**Argued &**

**Decided on** : **31.10.2013**

**Sisira J.De Abrew, J**

Heard both counsel in support of their respective cases.

The accused – appellant in this case was convicted for raping a girl named Danansuriya Arachchige Sujeewa Disana Kumari and was sentenced to a term of ten years rigorous imprisonment, to pay a fine of Rs. 2500/- carrying a default sentence of three months rigorous imprisonment and to pay a sum of Rs. 25,000/- as compensation to the victim carrying a default sentence of two years rigorous imprisonment. Being aggrieved by the said conviction and the sentence he has appealed to this court. Facts of this case may be briefly summarised as follows:

The prosecutrix in this case was below average intelligence (according to the doctor). On the day of incident between 3.30 p.m. and 5.30 p.m. the accused-appellant has come to the house of the prosecutrix and raped her in her brother's room. According to the doctor there was a vaginal penetration. The doctor has found two recent contusions in the vagina.

Prosecutrix states that accused-appellant ~~is~~ inserted his male organ to her vagina. Learned Counsel for accused-appellant contends that her evidence cannot be relied upon as she, in the cross examination, has stated that she could not remember what happened after the accused-appellant came to the house. But it appears from the evidence that she is a person who forgets things due to her mental condition. (below average intelligence). Learned Counsel brings to the notice of Court the history given by her in the short history. She has said that the accused-appellant had promised to give her money. Harping on this statement learned Counsel contends that she has given her consent. We are unable agree with this submission. It was only made by the accused-appellant that he would give money. That would not mean that prosecutrix had given the consent to the sexual act. The accused-appellant, in the dock statement, had denied this incident. When we consider the evidence led at the trial we are of the opinion that the prosecution has proved its case beyond reasonable doubt. Therefore we refuse to interfere with the judgment of the learned trial Judge. We affirm the conviction 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**

NA/-