

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

Kanaththage Sarath alias

Maruthika

Accused -Appellant

C.A. Appeal No. 182/2012

H.C. Panadura 2315/2007

Vs.

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Respondent

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

Counsel : Sharon Seresinhe for the Accused-Appellant.  
Shavindra Fernando D.S.G. for the State.

Argued &

Decided on : 22.10.2013.

**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 Kananke Vithanage Rohini. He was sentenced to a term of 10 years rigorous imprisonment, to pay a fine of Rs. 15,000/- carrying a default sentence of six months simple imprisonment and to pay a sum of Rs.100,000/- 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 briefly summarized as follows:

At the time of the incident Rohini was under 13 years age. On 27.03.1990 when Rohini and the other family members including her father who were sleeping in the house, two people came and knocked on the door saying that they were from the police. Rohini's father opened the door. Thereafter they entered the house and asked for food. Rohini's father and Rohini later identified these two people as the 1<sup>st</sup> and 2<sup>nd</sup> accused. However the 1<sup>st</sup> accused was acquitted as his identity was not proved beyond reasonable doubt. After both

accused asked for food, Rohini's father gave food to the two accused. After eating the food, the 2<sup>nd</sup> accused (the accused-appellant) told Rohini to go to the kitchen. She was asked to lie on a mat. Thereafter the accused-appellant rubbed coconut oil on her genital area. He also rubbed coconut oil on his male organ. Thereafter the accused-appellant raped her. After raping the girl, the accused-appellant ordered her to prepare tea. There was a bottle lamp burning inside the house. At the time of the incident the bottle lamp was taken to the kitchen. The father and the other inmates of the house were kept under a table at the time that the accused-appellant raped Rohini. Rohini identified the accused-appellant subsequently at the identification parade. This was four years after the incident. After the rape incident Rohini had felt that she was bleeding from her vagina and there were blood stains on her frock. The fact that there were blood stains on her frock was observed by Rohini's father. Later this was also observed by Police Sergeant Nandasena. According to the Police observation there was a swelling on the fore-head of Rohini. Rohini says, prior to the incident, one of them gave a blow on her head. Police could not get the medico-legal report from the doctor who examined Rohini during the pendency of the investigation. Rohini and the father made a prompt complaint to the Police on the following morning. Father of Rohini too identified

the accused-appellant as the person who entered his house with the other accused.

Learned Counsel for the accused-appellant contends that the penetration has not been proved as there is no medical evidence. It is true that there is no medical evidence on this point. At the time of the trial the doctor who examined the victim had died. His medical notes were also not available. Rohini very clearly says that the mail organ of the accused-appellant was inserted in to her vagina after applying coconut oil. The bottle of the coconut oil was also found by the police near the mat on which she was raped. There were blood stains on her frock after the incident. When we consider all these matters, we are of the opinion that the penetration has been proved beyond reasonable doubt although the prosecution failed to produce medical evidence. We therefore reject the submission of learned Counsel for the accused-appellant. The accused -appellant has been identified by both Rohini and her father. We therefore hold that the identity of the accused-appellant has been proved beyond reasonable doubt.

Accused-appellant committed sexual intercourse against the will of Rohini. When we consider the evidence of this case, we

hold the view that the prosecution has proved its case beyond reasonable doubt . We therefore refuse to interfere with the judgment of the learned trial judge. We affirm the conviction and the sentence and dismiss the appeal.

The learned DSG brings to the notice of Court that the accused-appellant is presently serving a sentence . We direct the Prison Authorities to implement the sentence imposed by the learned trial judge after he completes the sentence that he is serving.

*Appeal dismissed.*

**JUDGE OF THE COURT OF APPEAL**

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

I agree.

**JUDGE OF THE COURT OF APPEAL.**

/mds