

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

1. P.G. Jayatha Bandara,
2. A Upul Dhammika Badara
3. M.V. Nalinda Dassaayke,
4. V. Sunil Ekanayake,
5. P.Chaminda Ratnayake

Accused-Appellants

Vs.

The Attorney General,

Respondent

C.A. 196-200/2011

H.C. Kandy Case No: 86/2006

Before : Sisira J. de Abrew,J. (Acting P/CA) &
P.W.D.C. Jayathilaka,J.

Counsel : Ranjith Meegaswatte for the Accused-Appellant.
Vijith Malalgoda DSG. for the respondent.

Argued &

Decided on : 07.02.2014

Sisira J. de Abrew,J.(Acting P/CA)

Heard both counsel in support of their respective cases. The accused-appellant in this case were convicted for raping a girl named Koin Menike.

After trial the learned trial Judge sentenced each of the accused-appellants to a term of 10 years Rigorous Imprisonment to pay a fine of Rs: 5000/- carrying a default sentence of 6 months simple Imprisonment and to pay a sum of Rs: 30,000/- as compensation to the victim carrying a default sentence of 2 years Simple Imprisonment . Being aggrieved by the said conviction and the sentence they have appealed to this Court. The facts of this case may be briefly summarized as follows:

On the day of the incident, when the victim was waiting at a bus halt, she was dragged by the 1st and the 3rd accused to an abandoned house and all five accused-appellants raped her. Learned Additional Solicitor General submits that he is unable to support the conviction in view of the contradictory nature of the evidence of the prosecution. Koin Menike giving evidence on the 1st day named the names of five accused-appellants. But on the following day she could not identify any accused-appellant by their names. However she correctly mentioned the name of the 4th accused. According to her, the incident of rape took place in an abandoned house. Thereafter the 2nd accused took her to his house and the mother of the 2nd accused offered her lunch. She however did not take lunch. After the parents of the 2nd accused left the house for the purpose of taking a bath, sexual intercourse was performed on her by the 2nd accused. Thereafter 3rd accused came near the house and both 2nd and 3rd accused took her in a vehicle that was plying on the road and dropped her near her house. Learned Additional Solicitor General submits that the said conduct of Koin

Menike suggests that the 2nd accused performed sexual intercourse on her with her consent. This is evident by the fact that she was dropped by 2nd and 3rd accused in a vehicle near her house. This shows that she had sexual intercourse with the 2nd accused with her consent. If that is so, the 2nd accused cannot be convicted for the offence of rape.

When we consider the identification of the 1st, 2nd, 3rd and 5th accused there appears to be a problem. On the very first day when she gave evidence, she named the names of the accused. But on the 2nd day she failed to identify them in Court. Therefore identity of the 1st, 2nd, 3rd and 5th accused has not been proved beyond reasonable doubt. With regard to the participation of the 4th accused there appears to be a major contradiction. She says in her evidence that 4th accused too raped her. But in a statement made to the Police she has said that 4th accused only touched her breast. This contradiction was marked as V7 [page 168 of the brief]. The learned trial Judge has not considered the above matters.

When we consider all these matters it is difficult to conclude beyond reasonable doubt that the charge of rape has been proved against all the accused-appellants. Learned Additional Solicitor General submits that he is unable to support the conviction as prosecution has not proved the case beyond reasonable doubt. For the above reasons we hold that the prosecution has not proved its case beyond reasonable doubt. We therefore set aside the conviction and the sentence of all the accused-appellants and acquit them of the charges with which they were convicted. We thank the learned Additional Solicitor General for assisting Court .

Appeal allowed.

Acting President of the Court of Appeal

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

I agree.

Judge of the Court of Appeal

Jmr/-