

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

B. Upali Senarathne
alias Buddadasage Upali

Accused Appellant

CA 25/09

HC-Anuradhapura-127/00

Vs

The Attorney General

Respondent

Before : **Sisira J. de Abrew, J. (P/CA) &**

P.W.D.C. Jatathilaka, J.

Counsel : Sudath Karavita for Accused Appellant

Thusith Mudalige, SSC for AG

Argued &

Decided on : 06.03.2014

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

Heard both counsel in support of their respective cases. The accused appellant in this case was convicted for raping a girl named Disna Udayangani and was sentenced to a term of 8 years Rigorous Imprisonment, to pay a fine of Rs. 5000/- carrying a default sentence of 6 months Rigorous Imprisonment and to pay a sum of Rs. 200,000/- as compensation to the prosecutrix carrying a default sentence of 4 years Rigorous Imprisonment. Being aggrieved by the said conviction and the sentence he has appealed to this court. He was acquitted of the charge of abduction.

Before I deal with the facts of this case, I would like to observe that the default sentence imposed by the learned trial judge for non-payment of the compensation is illegal. The maximum default sentence that can be imposed for non-payment of compensation ordered by the judge in respect of a charge of rape is 2 years (vide Section 364 (4) of the Penal Code as amended by Act No.22 of 1995).

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

The prosecutrix Udayangani eloped with the accused appellant on 17.05.1999 as she was harassed by her grandmother. On this day, her mother too had been present at home. However she eloped with the accused appellant. Both the accused appellant and Udayangani went to the house of one Jayarathne. They both slept together in the house of Jayarathne on 17.05.1999. Prosecutrix says that the accused appellant committed sexual intercourse on her in the night of 17th May without her consent. She further says that prior to this incident she had not had sexual intercourse with anyone. The Doctor who examined Udayangani on 22.05.1999 was questioned on this point. According to the Doctor, there were old tears in the hymen. Doctor says if sexual intercourse was first committed on 17.05.1999, the old tears observed by him could not have

taken place. Therefore, it appears that the evidence of the prosecutrix has been contradicted by the Medical Evidence.

In a case of rape, it is dangerous to act on the uncorroborated evidence of the prosecutrix. This view was expressed by His Lordship Justice Ranjith Dheeraratne in Sunil Vs. Attorney General 1986 1 SLR page 230 wherein His Lordship held thus "It is very dangerous to act on uncorroborated testimony of a woman of a sex offence, but if her evidence is convincing such evidence could be acted on even in the absence of corroboration". In King Vs. Athukorala 50 NLR 256 Gratiaen, J. held that "when an accused is charged with rape, corroboration of the story of the prosecutrix must come from some independent quarter and not from the prosecutrix herself. A complaint made by the prosecutrix to the Police in which she implicated the accused cannot be regarded as corroboration of her evidence".

As I pointed out earlier, the medical evidence has contradicted the evidence of the prosecutrix. Learned trial judge at page 175 of the brief concluded that Udayangani had had sex with one of her classmates. But there is no such evidence led at the trial. The prosecutrix Udayangani had said that she was having a love affair with one of her classmates but did not have ^{sexual intercourse} ~~sex~~ (Vide page 92 of the brief). Therefore, we hold that the learned trial judge has committed a misdirection on this point.

When we consider the evidence of the prosecutrix Udayangani and the Medical evidence, it is difficult to accept, beyond reasonable doubt, the story of the prosecutrix. That is to say that she had had first sexual intercourse on 17.05.1999. We feel that there is a reasonable doubt on this point. Learned Senior State counsel too submits that he has no answer to this question and unable to support the conviction. For the above reasons, we set aside the

conviction and the sentence and acquit the accused
appellant of the charge of rape.

Appeal is allowed.

PRESIDENT OF THE COURT OF APPEAL

P.W.D.C. JAYATHILAKA, J.

I agree.

JUDGE OF THE COURT OF APPEAL

LA/-