

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

S.M.R. Nandasena Kudabandara

**Accused-Appellant.**

C.A.No.191/2009

H.C.Badulla No.50/2002

Vs.

The Attorney-General

**Respondent**

**C.A.No.191/2009**

**H.C.Badulla No.50/2002**

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

**Counsel** : Amila Palliyage for the Accused-Appellant.  
Varuika Heettige SSC for the A.G.

**Argued and**

**Decided on** : 07.03.2014

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

Accused – Appellant who is on bail is present in Court.

Heard both counsel in support of their respective cases.

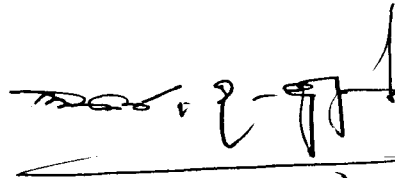
The accused-appellant in this case was convicted for raping a woman named Kanchana and was sentenced to a term of 07 years Rigorous Imprisonment and to pay a fine of Rs.20,000/= carrying a default sentence of 02 years simple imprisonment and to pay a sum of Rs. 2,50,000/- to the victim carrying a default sentence of 03 years imprisonment. Being aggrieved by the said conviction and the sentence he has appealed to this Court. Fact of this case may be briefly summarised as follows.

According to the prosecutrix in this case the accused-appellant has performed sexual intercourse on several occasions. On the first occasion the accused-appellant, the prosecutrix and the accused-appellant's daughter went to nearby jungle to collect the fire wood. In the jungle accused-appellant sent her little daughter away from this place asking her to bring some fruits. Thereafter he committed ~~the~~ sexual intercourse on Kanchana without her consent. On the 2<sup>nd</sup> occasion when the accused-appellant's wife went to the neighbouring house to watch the television, he sent her daughter to the temple. But surprisingly Kanchana remains at home. Thereafter accused-appellant committed sexual intercourse on her without consent. On the 3<sup>rd</sup> occasion when the wife went to a hospital, appellant again committed sexual intercourse on her without her consent. According

to her the accused-appellant had threatened her to kill her parent if the incident is divulged. But the question that arises is that if he had so threatened as to why she remained in the house of the accused-appellant after the wife of the accused-appellant left the house. From the above evidence it appears that there is a reasonable doubt whether she consented to the sexual intercourse. She was questioned by learned counsel for the accused-appellant whether she had any sexual intercourse with Police Constable Upananda with whom she was having a love affair. She admitted the love affair but did not admit the sexual intercourse with Police Constable Upananda. But later in her evidence she admitted she had had sexual intercourse with the police constable Upananda. It is significant to note that the sexual intercourse with the police constable Upananda, according to her, has taken place in the month of March of 1999. According to the indictment, incident was also in the month of March 1999. The question that arises is that as to why she first denied having had sexual intercourse with the police constable Upananda and later admitted that she had had sexual intercourse with Upananda. From this evidence we doubt whether she was trying to attribute the sexual intercourse that she had with Upananda to the accused-appellant. This doubt arises only if she had had sexual intercourse with the accused-appellant. Learned Senior State Counsel Miss. Varunika Hettige submits that in view of the contradictory nature of the evidence of the prosecution she is unable to support the conviction. We are pleased with this submission. When we consider the evidence of the prosecutrix we are unable to hold that the prosecution has proved the case beyond reasonable doubt. Learned trial judge has failed to

consider these matters. For the above reasons, we think it is unsafe to allow the conviction to stand. We hold that the prosecution has not proved its case beyond reasonable doubt. For the above reasons, we set aside the conviction and the sentence of the accused- appellant and acquit the accused- appellant of the charge of rape.

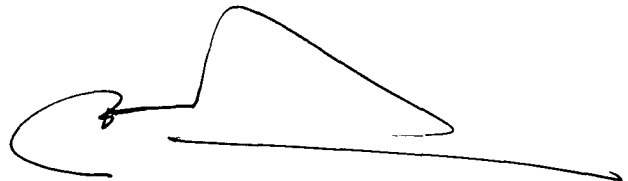
*Appeal allowed.*



**PRESIDENT OF THE COURT OF APPEAL**

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

I agree.



**JUDGE OF THE COURT OF APPEAL**

- WC/-