

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

A.H.M. Ruwan Sanjeewa

**Accused Appellant**

CA 05/09

HC-Puttalam-184/05

Vs.

The Attorney General

**Respondent**

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

Counsel : Neranjan Jayasinghe for the Accused  
Appellant

Rohantha Abeysuriya, DSG for the  
Attorney-General.

Argued &

Decided on : 04.03.2014

**Sisira 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 woman named Chandani Adikari and was sentenced to a term of 10 years Rigorous Imprisonment, to pay a fine of Rs. 2,500/- and to pay a sum of Rs. 100,000/- as compensation to the victim. Being aggrieved by the said conviction and the sentence he has appealed to this court.

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

On the day of the incident the accused appellant came to the house of the victim and raped her on the floor of the living area of the house. According to the medical evidence, the victim was suffering from a disease called Mongolism. But the learned trial judge has observed that

the victim was in a position to understand the questions and answer. Vide page 24 of the appeal brief. Although the victim says that she was raped she, under cross examination, at page 37, 38 and 39, admitted that this incident did not take place under the hands of the accused appellant. This means she had admitted that the accused appellant did not commit sexual intercourse on her. She has further admitted that what she was telling in court is what her farther told her secretly. When we consider the evidence, we feel that there is a grave reasonable doubt whether the accused appellant committed sexual intercourse on her or not. There is also evidence that the victim's farther had assaulted the accused appellant. In a case of rape prosecution must prove the following ingredients beyond the reasonable doubt.

1. Sexual intercourse was committed on the woman
2. The said sexual intercourse was committed by the  
accused appellant

3. The sexual intercourse was committed on her against her will or without her consent

When we consider the evidence, it appears that the ingredient No. 1 has not been proved by the prosecution beyond reasonable doubt. We therefore hold that the accused appellant should be acquitted on this ground alone. The learned trial Judge failed to consider the above matters.

The accused appellant in his evidence took up the defence of alibi. His mother also gave evidence supporting the fact that in the afternoon of the day of the alleged incident her son was at home. The accused appellant in his evidence has further admitted that he went to one of his uncles place and he went with one Samantha. Learned Trial Judge in his judgement has observed that the accused appellant has not called the said uncle and Samantha. He has further observed that the defence of alibi was therefore not corroborated by the accused appellant. He

observed that as a result of the failure on the part of the accused appellant to corroborate his defence of alibi, the prosecution case has been corroborated. We hold that this is a clear misdirection in law. Further, when an accused person takes up an alibi in a Criminal case, there is no burden whatsoever on the accused appellant to prove his defence of alibi. This view is supported by the judicial decision in Banda Vs Attorney General 1999 3 SLR 168 wherein His Lordship Justice Jayasooriya held that "there is no burden whatsoever by an accused who puts forward a plea of alibi and the burden is always on prosecution to establish beyond reasonable doubt that the accused was not elsewhere but present at the time of the commission of offence". The same principle was laid down in King Vs Marshall 51 NLR Page 157 and the King Vs Fernando 48 NLR 451. In Punchi Banda Vs State 76 NLR page 293 His Lordship Justice G.P.A. de Silva observed that "when an alibi is pleaded in defence, the burden of proof on the accused is not similar to that in a case where the accused raises a

mitigatory or exculpatory plea. Where the defence is that of an alibi, the accused has no burden as such of establishing any fact to any degree of probability".

When we consider the evidence led at the trial, we hold the view that the prosecution has not proved its case beyond reasonable doubt. We therefore set aside the conviction and the sentence imposed on the accused appellant and acquit him of the charge with which he was convicted. Accused is acquitted.

*Appeal allowed.*

**PRESIDENT OF THE COURT OF APPEAL**

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

**I agree.**

**JUDGE OF THE COURT OF APPEAL**

LA/-