

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

1. Dissanayake Mudiyansele Sugath
Nanda alias Bandu
Madagedera, Wewathenna
Maliyanda.
2. Dissanayake Mudiyansele
Weerasinghe alias Chuti
Madagedera, Wewathenna
Maliyanda.

ACCUSED-APPELLANTS

C.A 97-98/2011
H.C. Badulla 74/2008

Vs.

Hon. The Attorney General
Attorney General's Department
Colombo 12.

RESPONDENT

BEFORE: Anil Gooneratne J. &
P.W.D.C. Jayathilaka J.

COUNSEL: Jeffrey Zeinudeen for Accused-Appellants
V.K. Malalgoda Addl. S.G. for the Respondent

ARGUED ON: 25.03.2014

DECIDED ON: 03.04.2014

GOONERATNE J.

The 1st & 2nd Accused-Appellants were convicted of gang rape of a woman described in the indictment as Basnayake Mudiyanseelage Seelawathie and both of them sentenced to 10 years Rigorous Imprisonment and a fine of Rs. 10,000/- and in default of payment of fine to a sentence of 6 months Rigorous Imprisonment. Both Accused were also ordered to pay compensation to the prosecutrix in a sum of Rs. 50,000/- and in default of payment of compensation to 2 years Rigorous Imprisonment.

To state very briefly the facts of this case are as follows. On 22.12.2005 the husband of the prosecutrix was not in the house at the time the incident took place. He was at a party in another house away from the place of incident. The prosecutrix was a mother of 3 children, all three being girls. Prosecutrix has described the situation of the house which consists of two rooms. The rooms are separated by a curtain (there is no door) which was a saree used as a curtain to separate the two rooms. The house had only two

doors one being the front door and behind was the kitchen door. According to the evidence of the prosecutrix' her husband left for the party at about 6.30 p.m. Thereafter she cooked and fed the children and went to sleep and awaiting the arrival of the husband. At about 11.30 p.m she heard a tap on the kitchen door. The kitchen door was in two pieces and a mammotty was kept on the door to keep the door closed. Then the two accused pushed opened the kitchen door and got into the house.

The prosecutrix was able to identify the Accused with the light from the bottle lamp. Both Accused are from the same village and the prosecutrix identified them by their names. Thereafter the 2nd Accused held the prosecutrix and forced her to the ground, ... මම අල්ලාගෙන බිමට හිර කර ගත්තා (pg. 39) and committed the act of rape. After some time the 2nd Accused came. He pushed the 2nd Accused and committed the act of rape on her. At that moment the prosecutrix became unconscious. When she regained consciousness she saw both accused leaving the house. Thereafter the husband came home at about 12.30 p.m., and the prosecutrix narrated the incident. Husband hearing the narration had been emotional at that moment and wanted to take revenge but prosecutrix persuaded the husband not to do

anything by clinging on to him. Thereafter both of them made complaints to the police at the first available opportunity and time in the morning.

At the hearing before this court the learned counsel for the Accused-Appellant submitted that the position of the defence was a total denial of the offence. Learned counsel for the Accused-Appellant attempted to argue that the prosecutrix has failed to explain the absence of consent. He also referred to the fact that the children were in the other room and it was not possible to perform any act of rape without disturbing them. Counsel also referred to the dock statements of the two Accused. It was suggested by referring to the dock statement that both the Accused were at the same party and they went to sleep after 12.00 midnight.

The learned Additional Solicitor General referred to the fact that the prosecutrix evidence had not been challenged by the Accused-Appellants at the trial. Nor was a defence of consent suggested to the prosecutrix. He invited this court to the medical report which indicate 2 injuries caused to the body which is consistent with the version of the prosecutrix. No injury to the vagina.

It is not in dispute that the evidence of the prosecutrix was not challenged by the defence. The medical report other than the two injuries to

the body as stated above does not show any injury to the vagina. It is acceptable since the prosecutrix is a married woman with 3 children, who by the date of the incident lived with the husband for about 17 years. Having perused the judgment we find that the learned High Court Judge has correctly approached the case and considered the evidence of the prosecutrix with other evidence inclusive of the medical report and arrived at a conclusion to find the Accused-Appellant guilty of gang rape. We note that the evidence of the prosecutrix satisfy the test of consistency. The prosecution has proved the case beyond reasonable doubt. We see no real basis to interfere with the judgment of the learned High Court Judge. We affirm the conviction and the sentence, and we proceed to dismiss the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

P.W.D.C. Jayathilake J.

I agree.

JUDGE OF THE COURT OF APPEAL