

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

Hettiaratchchi Gamage Saman Kumara

**ACCUSED-APPELLANT**

C.A. 49/2013  
H.C. Matara 84/2010

Vs.

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

**RESPONDENT**

**BEFORE:** Anil Gooneratne J. &  
Malinie Gunaratne J.

**COUNSEL:** N. A. Chandana Sri Nissanka for the Accused-Appellant  
Shanaka Wijesinghe D.S.G., for the Respondent

**ARGUED ON:** 12.05.2014

**DECIDED ON:** 25.06.2014

described in the examination-in-chief of the victim. Complaint was made by the prosecutrix no sooner the incident, to her sister and thereafter to the police.

AT the hearing of this appeal the learned counsel or the Appellant submitted that the prosecutrix had made two statements to the police and the first statement does not reveal a proper identification of the Accused person. As such the prosecution has not proved the case beyond reasonable doubt. He also submitted that identity is only based on moon light and it is not a proper identification and unable to convict the Accused-Appellant. He also referred to the medical report where the Doctor had not recorded the name of the Accused.

The learned Deputy Solicitor General submitted that the prosecution case had been proved beyond reasonable doubt and submitted that the Accused had been known to the victim for some years as a person who comes to the garden of the prosecutrix to pluck flowers. He also submitted that identity had been properly established and apart from knowing the Accused for some time. She was able to identify the Accused by the torch light and moon light which was sufficient to prove identity. He also submitted that giving two statements to the police cannot harm the prosecution case since

the police in order to satisfy the question of identity had kept on asking questions from the prosecutrix to be sure of identity. There is no doubt that the prosecutrix had in her evidence in court without difficulty gave evidence on the identity of the Accused person. Learned Deputy Solicitor General also referred to the age of the prosecutrix who was 64 years at the time of incident.

Having perused the judgment of the trial Judge, it appears that the trial Judge has given his mind to all vital points of the case. Trial Judge having analysed the version of the prosecutrix arrives at a conclusion that the prosecutrix had no reason to implicate the Accused or substantiate her side of the story by lying to court. The trial Judge has also considered the dock statement of the Accused, and does not favour the Accused's position based on the dock statement, to be truthful for the reason that evidence establish that the Accused is not an unknown person since he also lives in the vicinity and a person who comes very often to pluck flowers from the victims garden. As such the position and situation n of the victim living alone was known to the Accused. Identity of the Accused had also been considered by the trail Judge. I find that no proper grounds are urged on behalf of the Accused party to interfere with the conviction of the Accused. Prosecutrix' version is consistent

and no sooner the incident occurred she had complained to her own sister (who was) living within a short distance from the house of the prosecutrix. Thereafter at the earliest opportunity informed the police about the act of rape and statements recorded. The evidence in court is consistent, although evidence was given 3 years after the incident. The contradiction marked is not material to harm the prosecution case.

In all the above circumstances we are not inclined to interfere and intervene with the views expressed by the learned High Court Judge. As such we affirm the conviction and sentence, and dismiss this appeal.

Appeal dismissed.

  
JUDGE OF THE COURT OF APPEAL

Malinie Gunaratne J.

I agree.

  
JUDGE OF THE COURT OF APPEAL