

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

Weerasekera Arachchilage Piyaratne

**ACCUSED-APPELLANT**

C.A 59/2009

(H.C. Ratnapura 101-1999)

Vs.

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

**COMPLAINANT-RESPONDENT**

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

**COUNSEL:** Indika Mallawarachchi for the Accused-Appellant  
  
Jayantha Jayasuriya P.C., A.S.G. with Ayesha Jinasena D.S.G.  
For the Complainant-Respondent

**ARGUED ON:** 30.06.2014

**DECIDED ON:** 16.09.2014

**GOONERATNE J.**

Accused-Appellant was indicted for committing rape on or about 08.03.1997 on one Disna Kumari who is mentally or physically disabled, an offence punishable in terms of Section 364(2)(F) of the Penal Code as amended. Accused was convicted and sentenced to 18 years rigorous imprisonment and fined Rs. 10,000/-, which carries a default sentence of one year rigorous imprisonment and compensation in a sum of Rs. 10,000/- which also carries a default sentence of one year rigorous imprisonment.

In brief the case of the prosecution as revealed in evidence was that the victim had gone for a bath with her sister. On the way the Accused had dragged and assaulted her. Victim explains as 'එතකොට මු ගහ ගහ ඇදගෙන ගියා'. She was taken to a place which is described by the prosecutrix as 'වේල්ල ලොට අරන් ගියා'. Thereafter she had been raped by the Accused-Appellant. The victim describes the incident of rape in the best possible way in which she could describe and explain the act of rape. The victim had, on the first available opportunity informed her mother when the mother came home in the evening of the day in question. Victim identified the Accused. Though the

defence position was a doubtful identification, the victim made a dock identification and was able to explain in her own way the identity of the Accused person. The mother of the prosecutrix in her evidence had explained the physical and mental condition of her daughter the victim in this case. It is in evidence that the daughter is subject to epileptic fits and some form of physical disability. There are also certain spells and intervals when the victim is unable to talk. Evidence reveal that the victim needs assistance and the other sister even abandoned her school education to help the victim, in her day to day life.

The learned defence counsel submitted to this court that the evidence relied upon by the prosecution is more or less hearsay evidence (mother's evidence). There is no proper clue as to the date of incident. Learned counsel no doubt was critical of the trial Judge's views expressed at pg. (182), on demeanor and deportment and on the aspect of reasonable doubt. Trial Judge seems to have given his candid views of reasonable doubt. As to how the learned trial Judge equate reasonableness to reasons and in the event reasons cannot be adduce would not amount to reasonable doubt needs a better explanation by the learned trial Judge. Reasonable would ordinarily be agreeable to reason which is not absurd. Another definition would be to say

endowed with reasons, reasoning. Nevertheless it appears to this court that the learned High Court Judge has given his mind to the defence case.

The following pages of his judgment at folios 182 – 185 seems to be his explanation when the Judge considered the available time factor and the value of evidence of the defence. The other witness called by the defence is not supportive of the Accused version as regards his presence at the community centre at times suggested for a function. In other words the suggested alibi cannot be fortified by the evidence of the other defence witness. Accused in his evidence maintains that he was present at the community centre at all relevant times of the day to demonstrate that he was elsewhere and not at the scene of the crime. The probabilities to be elsewhere does not tally with the evidence of the other defence witness. This seems to be the factual position and the trial Judge's conclusion on same cannot be faulted and this court does not wish to interfere with same, although burden of proof of 'alibi' is not on the defence.

The trial Judge has also considered the medical evidence. No doubt the Doctor's evidence and the medical report support the prosecution case. Defence counsel had at the trial cross-examined the Doctor who gave evidence to show that the injury was not recent. Doctor was able to explain with clarity

all necessary details to meet the defence position. At this point of this judgment I would refer to the plea of alibi and the defence witnesses, as described in the following decided case..

*In Dudh Nath Pandey vs. State of U.P. AIR 1981, 912 S.C.*

Defence witnesses are entitled to equal treatment with those of the prosecution and, Courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often, they tell lies but so do the prosecution witness. (para 19)

The plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reason of his presence at another place. The plea can therefore succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed.

In all the above circumstances we are not inclined to intervene and interfere with the conviction and sentence. As such we affirm the conviction and sentence, and proceed to dismiss this appeal

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL