

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

**In the matter of an Appeal in terms of  
Section 331 of the Criminal Procedure Act  
No. 15 of 1979.**

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

**COMPLAINANT**

**Vs,**

Yodhasinghegedara Chandrasoma,  
No. 100 B, Ihalagama,  
Atabage.

**C.A No 87/2008**

**ACCUSED**

**H/C Kandy Case No.193/2003**

**And,**

Yodhasinghegedara Chandrasoma,  
No. 100 B, Ihalagama,  
Atabage.

**ACCUSED-APPELLANT**

**Vs,**

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

**Respondent**

**Before** : **Vijith K. Malalgoda PC J (P/CA) &  
H.C.J. Madawala J**

**Counsel** : **Neville Abeyratne with Kaushalya Dias and Asanka  
Gihan for the Accused –Appellant,  
Haripriya Jayasundara DSG for the Respondent.**

**Argued On: 06.05.2015**

**Decided On: 15.07.2015**

## **Order**

### **Vijith K. Malalgoda PC J**

Accused- Appellant was indicated before the High Court of Kandy for committing rape on a girl below 16 years, an offence punishable under *section 364(2) of the Penal Code read with Penal Code (Amendment) Act No 22 of 1995*. At the conclusion of the High Court trial, the Accused was found guilty by the Learned High Court Judge and sentenced him for 10 years rigorous imprisonment with a fine of Rs. 2000/-, in default 1 month rigorous imprisonment and compensation of Rs. 25, 000/- and in default 6 months rigorous imprisonment. Being dissatisfied with the above conviction and sentence the accused had preferred this appeal.

According to the evidence of the prosecutrix Pitiyegedara Priyanthika Kumudu Kumari she was only 15 years when this incident took place. She` is a girl who had studied only up to 9<sup>th</sup> standard and was not attending school by that time. On a day in July 2002 while she was at home the accused, who is a person living in a neighboring village had come to her house in the pretext of “borrowing a firebrand”

The Accused had entered the house of the victim from the rear side and embraced her near the kitchen door. She raised cries but at the same time become unconscious. When she regains consciousness, she was naked, and was on a bed in her house and the Accused was also there without clothes. There was a pain in her private parts and also observed some blood in that area. The Accused had left the house after threatening her with death, if she informed it to others. According to the victim, she washed the cloths and attend to the work at home, but did not tell anybody due to fear.

About a week later the Accused had come to her house, took her to the room and touched her breasts and opened the buttons of her blouse. When she raised cries, she becomes unconscious and when she regain consciousness, she found all her clothes removed but the Accused was not there. She did not inform any of these incidents to anybody at home but when she observe that her menses were stopped for few months and also felt faintish, she informed her sister –in- law of the incident and thereafter went to Gampola Hospital with the sister-in-law. Doctors who examined her have confirmed her pregnancy and there after she had made a statement to Pussellawa Police. When she was questioned about her pregnancy during the High Court Trial she took up the position that she had a still birth.

The prosecutrix faced lengthy cross examination on behalf of the Accused but the defence failed to attack the credibility of her evidence. We could not find any contradictions or omissions in her evidence too.

Learned Counsel for the Accused–Appellant took up several objections at the argument. He firstly submitted that it is unsafe to act on the uncorroborated testimony of the victim. He further challenged the delay in making the complaint to the police, the identity of the Accused and failure by police to obtain a DNA Report before us.

Learned Counsel submitted that the evidence of Dr. Gajanayake who examined the victim and the evidence of Sumanawathi, mother of the victim cannot be considered as corroboration and in the

absence of any other evidence to corroborate the victim, it is unsafe to act only on the uncorroborated testimony of the victim.

In the case of **Gurcharen Sing Vs. State of Haryana AIR (1972) SC 2661** Indian Supreme Court held thus; as a rule of prudence however, court normally looks for some corroboration on her testimony so as to satisfy its conscience that she is telling the truth and that the person accused of rape on her has not been falsely implicated.

In contrary the Indian Supreme Court in **Bhoginbhai Harjibhoie Vs. State of Gujarat (1983) AIR SC 753** held “in the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule is adding insult to the injury.”

When there is strong uncontradicted evidence and in the absence of any strong reason for falsely implicating the accused, in such a situation our courts preferred to follow the later.

In the case of **Premasiri V. Attorney General 2006 (3) Sri LR 106 at 110** Eric Basnayeka J held “there is no rule that there must be in every case, be corroboration before a conviction can be allowed to stand. It is well settled law that a conviction for the offence of rape can be based on the sole testimony of the prosecutrix if it is **reliable, unimpeachable and there is no infirmity**. If the evidence of the prosecutrix inspires confidence it must be relied upon without seeking corroboration of her statement in material particular. (emphasis added)

Learned Counsel for the Accused-Appellant further submitted that the delay in making the complaint will aggravate the weaknesses in this case. As admitted by the prosecution the first complaint in this case had been made nearly after three months. According to the victim she was threatened with death by the accused after committing the Act of rape on her. Due to fear, she has not informed this to anyone. We also observe that her mother and brother with whom she lived were employed in the village as labourers and therefore she stayed alone at her place during the day time.

In such a situation when she says that due fears she did not complain to anybody, we have no reason to disbelieve her version. It was not even suggested to her that there is a reason for her to wrongly implicate the accused. If the girl was not pregnant, she wouldn't have complained against the accused at all. In such a situation it is wrong to conclude that the delay in making the complaint in the present case will affect the prosecution case.

The next point raised by the Learned Counsel for the Accused-Appellant was the question of Identity of the accused. Victim was subject to lengthy cross examination by the Defence Counsel at the High Court Trial. The position taken up by the victim at the trial was that she did not know the name of the Accused but knew him very well as a person from a neighboring village who visited her area to cut grass for cattle. Victim has admitted in her evidence that, it is her mother who told her the name of the accused, but she is certain that the person before court or the person whose name she had given to the police as well as to the doctor is the person who committed the act of rape on her. This evidence was unchallenged at the High Court Trial.

In the absence of direct evidence to the Act committed by the Accused, this court will have to further consider, whether the evidence led before the trial judge was sufficient to convict the Accused for rape. The victim was below the age of 16 at the time the offence committed. Victim was not able to give the exact date on which the offence committed but she was able to say that it was committed on her during the month of July, which was supported by the Medical evidence. According to the Birth Certificate of the girl, which was produced marked **P-01** she was born on 21.11. 1986. If the offence was committed in the month of July the girl's age by that time would be 15 years and eight months and therefore the offence comes under the provisions of *Penal Code (Amendment) Act No. 22 of 1995*.

The victim in her evidence did not say that she saw or felt the act committed by the accused, but said that the accused embraced her prior to her losing her consciousness and when she regained consciousness she was on a bed, all her cloths removed and observed some blood on her private parts. The accused too

was there without cloths and the accused left the house threatening her with death, if it is informed to the others. The above act was repeated once again few days later, on that day too she become unconscious before any act took place but three months later she was found pregnant. She denies having sexual relationship with any other during this period. When all these material taken together, we find that the only inferences this court can reach is the guilt of the accused and nothing else.

Counsel for the Accused-Appellant further argued that the failure by police to obtain a D.N.A report weakens the prosecution case. Obtaining a D.N.A report is not a must but if there is a positive report that will certainly strengthen the prosecution case. The Learned Trial Judge had believed the evidence of the prosecutrix as her evidence was convincing.

For the reasons adduced above I see no reason to interfere with the findings of the Learned High Court Judge in convicting the accused. I therefore affirm the conviction and the sentence imposed by the Learned High Court Judge of Kandy on 16.07.2008.

However with regard to implementation of the said order, I am of the view that it should take effect from the date of conviction i.e. from 16.07.2008.

**PRESIDENT OF THE COURT OF APPEAL**

**H.C.J. MADAWALA,**

I agree,

**JUDGE OF THE CUORT OF APPEAL**

Appeal Dismissed.