

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

In the matter of an appeal against the  
Order of the High Court under section  
331 of the Code of Criminal Procedure  
Act No.15 of 1979 as amended.

Lekamwasam Liyanage Ajantha  
Kumara

**Accused-Appellant**

**C.A.Case No:-72/2014**

**H.C.Badulla Case No:-265/2003**

**V.**

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

**Before:- H.N.J.Perera, J &  
K.K.Wickremasinghe, J.**

**Counsel:-Sharon Serasinghe Assigned for the Accused-Appellant  
A.R.H.Barry S.S.C for the Respondent**

**Argued On:-11.03.2015/15.5.2015**

**Written Submissions:-22.06.2015**

**Decided On:-14.10.2015**

**H.N.J.Perera, J.**

The accused-appellant was indicted before the High Court of Badulla for committing rape on Lekamwasam Liyanage Lasanthi during the period of 1<sup>st</sup> to 31<sup>st</sup> August 2001 an offence punishable under section 364 (3) of the Penal Code.

After trial on 20.05. 2014 the accused-appellant was found guilty as charged and was convicted and sentenced 15 years rigorous imprisonment and to a fine of Rs. 20,000/- carrying a default sentence of 06 months simple imprisonment. Aggrieved by the said conviction and sentence the accused-appellant had preferred this appeal to this court. Learned Counsel for the accused-appellant urged three grounds of appeal as militating against the maintenance of the conviction.

- (1)When there was serious doubts in the credibility of the prosecution case, the learned trial Judge has convicted the accused-appellant without considering those doubts.
- (2)When the medical evidence creates a reasonable doubt, the learned trial Judge has convicted the accused-appellant
- (3)The learned trial judge has not considered the dock statement when giving the judgment.

According to the prosecution the prosecutrix lived with her parents and she had two sisters and three brothers. Her eldest brother Ajantha Kumara in this case was married and lived with his family in the adjoining land. The accused-appellant served in the Sri Lanka Army during the war and as a result of injuries , he resigned from the Sri Lanka Army. On the day of the alleged incident only the prosecutrix was at home and she was sitting near the front door of the house. The accused-appellant came inside and closed the door. As the prosecutrix felt suspicious, she tried to get up from her chair. When she got up the accused-appellant held her tight and threatened to kill her if she struggled. The accused-appellant wanted to know whether she still had the affair with the boy called Eranda .he prosecutrix denied she had anything to do with him. Then the accused-appellant wanted her to prove that nothing bad had happened to her and pushed her on to the bed , raised her skirt , inserted his penis into her vagina and committed rape on her. After the act she found blood on her genital area. The accused-appellant threatened her to kill her if she told this to anyone and also said that he had done the same thing to her sister Samanthi.

According to the prosecutrix the accused-appellant had been assaulting and harassing her and she left the house on 29.05 2002 at 5.45 a.m in the morning without informing anyone and went to the Badulla Railway station and took the train to Colombo. According to the prosecutrix the alleged incident of rape took place in August 2001 and because of the continuous harassment she received from the accused-appellant she left the house and went to Badulla by train on the 29.05.2002 after about 9 months from the date of the incident. She speaks only of one incident of sexual harassment from the accused-appellant. She does not state that because of the continuous sexual harassment from the accused-appellant that she was compelled to leave her house.

It is to be noted that the prosecutrix never informed her parents about this incident. She states that the accused-appellant threatened her with death if she disclose this to anyone. But yet she states she informed her sister about the incident and sister did nothing. She has not informed her mother of the incident. Therefore It is not clear as to why she failed to inform her mother or any other member of her family about the incident. Further, the prosecutrix never made a voluntary complaint to the police about the alleged incident. She has stated that she informed about the incident to one of her sister. But the said sister was not called to give evidence in this case. The prosecutrix also failed to inform her mother about this incident. Although the mother had made a statement to the police, she too was not called to give evidence on behalf of the prosecution in this case. The prosecutrix came out with this story only when she was arrested by the Panadura police after she tried to commit suicide. She has failed to disclose about the said incident to any one until then. She came out with the story only after she was arrested by the Panadura police and was subjected to a medical examination by the J.M.O. Kandeketiya. In my opinion she has failed to give a plausible explanation for the undue delay in making a complaint to the police regarding the incident. In fact her evidence shows that she never intended to make a complaint to the police about this matter.

Further evidence led by the prosecution in this case clearly indicate that she had left her house because of the harassment meted out to her by the accused-appellant. She has never stated to court that it was because of the sexual harassment by the accused-appellant. The prosecutrix had stated that the accused-appellant questioned her about a person called Eranda and asked her whether she is having an affair with the said person. The prosecutrix has further admitted that her younger brother Aradhana too had advised her against the affair with the said boy called Eranda.

According to the medical report marked P2 she has been examined by Dr. Thalagune on 03.06.2002 at 3.25 p.m. In the short history given to the doctor she has stated that she was raped by a known person. The prosecutrix has not mentioned the name of the person who raped her. It is further stated that the hymen was lacerated and bleeding. The prosecutrix had been examined by two doctors and the prosecution marked the other medical report issued by Dr. Bandara as P2a. The prosecutrix had been examined by the said doctor on 2<sup>nd</sup> June at 9 a.m. In the short history it is stated that 'She has had intercourse with a known person, four months ago. Hymen is not intact. In P2a it is not stated that she had been raped but that she has had intercourse with a known person. The name of that person not mentioned. Clearly there is some contradiction in the history given by the prosecutrix to the two doctors. The learned trial judge has failed to consider and analyse the said evidence which is favorable to the accused-appellant in this case. Further whilst giving evidence the prosecutrix had admitted a letter shown to her by the defence. The said letter had been written by her. In the said letter she had referred to the person Eranda and asked whether Eranda has come to the village. She has further stated that she does not think that he will come back to the village because he destroyed her character (respect). There is no mercy from her to him. This clearly indicates that something really serious has taken place between her and Eranda. And that she is not prepared to forgive him for the harm done. This evidence

is very important when one consider the fact that there was an allegation made by her brothers that she was having an affair with the said person. In fact the prosecutrix has admitted whilst giving evidence that her younger brother Anuradha advised against it. The prosecutrix had failed give a plausible explanation for stating so. The accused-appellant had in his dock statement has clearly referred to this piece of evidence. But the learned trial Judge had clearly failed to consider and analyse the said evidence which in my opinion is very favourable to the accused-appellant in this case. In *Kathubdeen V. Republic of Sri Lanka* [1998]3 Sri.L.R 107 it was held that it is settled law that an unsworn statement must be treated as evidence. It has also been laid down that if the unsworn statement creates a reasonable doubt in the prosecution case or if it is believed, then the accused should be given the benefit of that doubt.

As contended by the Counsel for the accused-appellant I am also of the opinion that the evidence given by the prosecutrix is not credible.

In *Sumanasena V. Attorney General* [1999]3 Sri.L.R 137 it was held that:-  
“Just because the witness is belated witness court ought not to reject his testimony on that score alone, court must inquire into the reason for the delay and if the reason for the delay is plausible and justifiable the court could act on the evidence of a belated witness.”

In this case the victim has not given a plausible reason for the delay in making a complaint to the police. In fact the evidence of the prosecutrix in this case clearly shows that she never intended to make a complaint about this incident to the police. In fact she has not disclosed this incident to her mother either. Evidence led in this case very clearly establish the fact that she made this complaint after about 9 months of the incident because she was taken into custody by the Panadura police for attempting to commit suicide.

In *Gurcharan Singh V. State of Haryana* A.I.R 1972 S.C 2661 the Indian Supreme Court held thus:-

“As a rule of prudence, however, a 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 Premasiri V. The Queen 77 N.L.R 86 it was held that:-

“In a charge of rape it is proper for a Jury to convict on the uncorroborated evidence of the complainant only when such evidence is of such a character as to convince the Jury that she is speaking the truth.”

In Sunil and another V. The Attorney General 1986 1 S.L.R 230 it was held that:-

“Corroboration is only required if the witness requiring corroboration is otherwise credible. If the evidence of the witness requiring corroboration is not credible his testimony should be rejected and the accused acquitted. Seeking corroboration of a witness’s evidence should not be used as a process of inducing belief in such evidence where such evidence is not credible.

It is very dangerous to act on the uncorroborated testimony of a woman victim of a sex offence but if her evidence is convincing such evidence could be acted on even in the absence of corroboration.”

In the case of Director of Public Prosecutions V. Heston [1973] A.C. 296, 315(H.L); [1973]3 All ER 1056:-

“The essence of corroborative evidence is that one creditworthy witness confirms what another creditworthy witness has said. Any risk of the conviction of an innocent party is lessened if conviction is based upon the testimony of more than one acceptable witness. Corroborative evidence in the sense of some other material evidence in support implicating the accused furnishes a safeguard which makes a conclusion more sure than it would be without such evidence. But to rule it out on the basis that there is some mutuality between that which confirms and that which is confirmed would be to rule it out because of its essential nature and indeed because of its virtue. The purpose of corroborating is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is

sufficient and satisfactory and credible; and corroborative evidence will only fill its role if it itself is completely credible evidence.”

Further in King V. Athukorale 50 N.L.R 256 Justice Gratiaen states thus:-

“Where an accused is charged with rape, corroboration of the story of the prosecutrix must come from some independent quarter and not from the prosecutrix herself. A complaint made by the prosecutrix to the police in which she implicated the accused cannot be regarded as corroboration of her evidence.

The crucial issue that arose for determination by the learned trial Judge in the instant case was whether this girl had been subjected to sexual intercourse between the period commencing from 1<sup>st</sup> August to 31<sup>st</sup> August 2001 as alleged by the prosecution. According to the evidence given by her, the alleged incident took place somewhere in June 2001 or thereafter. To the police she has stated August 2001. The history given by her to the Doctor states sexual intercourse/ rape took place about 4 months prior to the date she was examined by the doctor namely 4 months prior to 2<sup>nd</sup> or 3<sup>rd</sup> June 2002. That is in February 2002. Dr.D.C.Rupersinghe in his evidence has stated that it is probable that the said old tear observed in the hymen of the prosecutrix would have been caused four months prior to the date of examination. The trial Judge has failed to seriously evaluate and consider the said contradictory nature of evidence led in this case.

In Premadasa V. State C.A 15/99, H.C Anuradhapura 01.06.2000 it was held:-

- (1) According to the medical Expert the probable date would be 16.08.1998 or a date prior to that date. Neither the State Counsel nor the trial Judge had invited her to elucidate her opinion any further or elaborate the grounds upon which the opinion was based.
- (2) The crucial issue was whether the prosecutrix had been in fact ravished on 22.08.1998 by the accused-appellant. The trial Judge has refrained from making any assertion in respect of this matter.

(3) This non direction on a vital question of fact tantamounts to a grave error of law which is sufficient to vitiate the conviction.

I hold that the evidence of the prosecutrix is not credible. And it is not safe to act on her evidence. For the above reasons, I hold that the evidence of the prosecutrix is not reliable and could not be believed. I, therefore, hold that it is unsafe to allow the conviction to stand. I, therefore, set aside the conviction and the sentence and acquit the accused.

Appeal allowed.

**JUDGE OF THE COURT OF APPEAL**

**K.K. Wickremasinghe, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**