

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

Attorney General

COMPLAINANT

Vs.

Jayasekara Vidanapathirana Indika
Priyantha

ACCUSED

Court of Appeal

Application No. CA 210/2013

High Court of Monaragala

468/2008

AND NOW BETWEEN

Jayasekara Vidanapathirana Indika
Priyantha

ACCUSED APPELLANT

Vs.

Attorney General
Attorney General's Department
Colombo 12.

COMPLAINANT - RESPONDENT

Before : P.R. Walgama, J
: S. Devika de L. Tennekoon, J

Council : A. S. M. Perera P.C. for the Aced – Appellant.
: S. Thurairaja ASG for the A.G.

Argued on : 26.07.2016

Decided on : 30.11.2016

CASE- NO- CA/ 210/ 3013- JUDGMENT- 30 .11.2016

P.R. Walgama, J

The Accused – Appellant stood trial in High Court, for having committed an offence punishable under Section 364 (1) of the Penal Code Amendment No. 22 of 1995.

The Accused –Appellant was convicted and sentenced to 15 years Rigorous Imprisonment, and Rs. 20,000/ as a fine carrying a default sentence of 3 years, further a compensation of Rs. 200,000/ to be paid to the victim, carrying a default sentence of 2 years.

The Honourable Attorney General filed indictment against the Accused- Appellant for committing the crime of rape in terms of Section 363 of the Penal Code, punishable under Section 364(1) of the Penal Code (Amendment) Act, No. 22 of 1995.

It is alleged by the prosecution that on or about 28 of May 2001 the Accused -Appellant did rape one Guruwela Manamperilage Lilawathi at Tanamalwila within the jurisdiction of Monaragala.

The prosecutrix, in her testimony to Court has categorically stated that she was raped by the Accused- Appellant, though she did not know his name. But it is salient to note that she explained to her daughter about his looks and he was identified in an identification parade, even after 3 years as he was arrested only after three years.

Due to the alleged incident the victim was in the hospital for 10 days, as she was bleeding after the act of rape and forcible sexual intercourse.

It is being noted that the main ground of appeal is the identity of the Accused -Appellant. But the victim has unequivocally stated that although she did not know his name has stated that she did identify him at the identification parade even after three years. The matter in hand is not a case of identifying the Accused -Appellant at a fleeting glance, which was the principle laid down in the famous Turnbull case. Even after the incident the victim has seen the Accused-Appellant moving about in a vehicle. Apparently Accused-Appellant was also living in the same vicinity. To fortify the prosecutrix's version her daughter too has testified to the effect that on this day in question

while she was returning from Colombo she saw the Accused- Appellant coming from the direction of their house and proceeding towards his house, and had observed blood stains in his shirt.

The counsel for the Accused- Appellant also contended that the prosecution has failed to establish that the Accused was absconding and was arrested only after 3 years. But it was the testimony of the Gramasevake of the area that although the Accused name appears in the electoral list he was absconding, he was searched in connection with the alleged incident.

As per MLR the Doctor has given a vivid description of the injuries received by the prosecutrix and the apparent cause for the same. It is to be noted that the counsel for the Accused has not cross examined the above witness regarding his observation as to the examination of the prosecutrix.

It also salient to note that in the course of the trial at the High Court the counsel for the Accused had admitted the fact that the accused knew the prosecutrix for some time and hence identifying the accused in the identification parade was not challenge.

Therefore it is the categorical position of the prosecution that the identification of the Accused - Appellant was not a difficult task for the prosecutrix, and the said identification does not raise any doubt which will be for the benefit of Accused- Appellant.

Therefore in the said backdrop it is abundantly clear that the Learned High Court Judge has evaluated the above issue as to the identity of the Accused in the correct perspective, and the said reason alleged as a ground appeal cannot stand, as it is devoid of merits.

It is also being noted that the Accused-Appellant has made a dock statement barely denying his involvement in the alleged crime.

For the reasons stemmed from the judgment and the factual and legal matrix, merits to effect the conviction and the sentence thereto, be affirmed.

Hence the appeal stands dismissed with the afore said observations.

Accordingly appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

S. Devika de L. Tennekoon, J

I agree.

JUDGE OF THE COURT OF APPEAL