

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

1. Polonnampere Arachchilage
Nishan Anushka Kumara
2. Yakgaha Hewage Chitralatha
Both of Mihindu Mawatha
Igala, Elpitiya.

ACCUSED – APPELLANTS

C.A. No. 241/2012

HC Balapitiya Case No. 927/06

Vs

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

RESPONDENT

BEFORE

: Deepali Wijesundera J.

: L.U. Jayasuriya J.

COUNSEL

: Tenny Fernando for the

Accused - Appellants

Shanaka Wijesinghe DSG with

Wasantha Perera SC for the

Attorney General

ARGUED ON

: 25th November, 2016

DECIDED ON

: 28th November, 2016

Deepali Wijesundera J.

This is an appeal by the second accused appellant against the conviction and sentence dated 29/11/2012 by the High Court of Balapitiya. There have been two accused, they were mother and son indicted before the High Court.

The accused appellant was convicted under *sec. 354 of the Penal Code* for abducting a girl named O.W. Hemamalee.

The victim who was 13 years of age was returning from school on 02/03/2004 and was waiting for a bus when the accused appellant came and offered to take her home in a three wheeler. After they got into the three wheeler the first accused (who is now dead) too has got into the three wheeler. Whilst proceeding towards their house the victim has noticed that they were going in some other direction and has questioned

the accused appellant. She has stated that they are taking a shorter route. Subsequently the victim was taken to an unknown place and kept in a house for two days. She has been raped by the first accused on the second day.

The main ground of appeal urged by the accused appellant was that the victim's mother was aware that the victim was taken away by the accused appellant but failed to make a complaint to the police.

The learned Deputy Solicitor General submitted that the accused appellant initiated the abduction by taking her in the three wheeler when the victim was at the bus stand without the consent of the parents. In the guise of taking her home she was taken to an unknown house and kept there for two days.

Sec. 352 of the Penal Code provides that;

***“Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to “kidnap such minor or person from lawful guardianship”.*”**

The learned High Court Judge has dealt with the ingredients to prove the charge of abduction under *sec. 352 of the Penal Code (p 307, 308 of the judgment)*. On perusal of evidence of the victim we find that the victim has been alone when she was taken away. Her parents or guardians were not present at the time she was offered to be taken home.

We are of the view that this constitutes the offence of abduction as explained in sec. 352 of the Penal Code.

For the afore stated reasons we are not inclined to set aside a well considered judgment. We affirm the judgment dated 29/11/2012 and dismiss the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya J.

I agree

JUDGE OF THE COURT OF APPEAL