

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

Selvaratnam Sivaneshan
6th Mile Post, Periyakulam
Nilavalley.

ACCUSED – APPELLANT

C.A. NO. 116/2008

Trincomalee HC No. 2158/03

Vs

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

RESPONDENT

BEFORE

: Deepali Wijesundera J.

: L.U. Jayasuriya J.

COUNSEL

: Dr. Ranjit Fernando for the

Accused – Appellant

Rohantha Abeysooriya SDS

For the Attorney General.

ARGUED ON

: 20th February, 2017

DECIDED ON

: 27th February, 2017

Deepali Wijesundera J.

The accused appellant was convicted for rape under sec. 364 (2) (e) of the penal code in the High Court of Trincomalee on 05/11/2008. This appeal has been filed against the said judgment.

The argument of the appellant's learned counsel was that the age of the victim was not established beyond reasonable doubt. The appellant argued that the date of birth was given as 1st of January 1985 by the victim while giving evidence in the High Court and referred to her evidence in page 44 of the brief where it is said as,

Q: When were you born?

A: On 01.01.1985 or on the 28th

(In the National Identity Card it is mentioned as 1985.08.28)

He also referred to the police officers evidence and stated that they did not give the date of birth as 28/08/85. The appellant argued that the Birth Certificate marked as P2 and the National Identity Card of the victim both state the date of birth as 28/08/85 which is different from what the victim said.

Therefore the only issue that has to be decided is whether the date of birth of the victim has been established by the prosecution.

The learned Deputy Solicitor General referred to page 78 and 44 of the brief and stated that in the National Identity Card and the Birth Certification both carry the date of birth as 28/08/85. He also submitted that the victim is not a literate person. On perusal of the victim's evidence at page 44 of the brief it appears that she is not a literate person.

The certified copy of the Birth Certification of the victim has been marked and produced by the Deputy Registrar marriages of Births and Deaths and it has been accepted by the High Court. The counsel for the accused has accepted P2 without any cross examination. Therefore the appellant can not say that the date of birth has not been established.

Sec. 10 (1) of the Registration of Birth and Deaths Act no. 17 of 1951 (as amended) deals with the duty of the Registrar to Registrar births deaths and still births. The learned High Court Judge in his judgment at p. 111 has dealt with the age of the victim correctly. Therefore it has been established when the sexual intercourse took place the victim has been under 16 years of age.

In *Silva vs Silva* 43 NLR 572 it is held that

"the statements in a birth certificate offered prima facie proof of the fact of birth of the date of birth, of the place of birth..."

Since it has been established that the victim had been under 16 years of age at the time of offence the consent is immaterial.

It is established law that a Birth Certificate marked and produced by an official witness is prima facie evidence. Therefore we decide the argument of the appellant can not be accepted.

For the afore stated reasons we decide to dismiss the appeal. Judgment and conviction of the learned High Court Judge of Batticaloa date 05/11/2008 is affirmed.

JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya J.

I agree

JUDGE OF THE COURT OF APPEAL