

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

In the matter of an Appeal  
Against an order of the High  
Court under Sec. 331 of the  
Code of Criminal Procedure  
Act No. 15 of 1979.

Arumabadadurage Ariyaratne,

**Accused**

**C. A. Case No. : 156/2005**

**H. C. Hambanthota Case No : 63/1999**

**Vs**

The Hon. Attorney General

Attorney General's Department,  
Colombo 12.

**Complainant**

**And now**

Arumabadadurage Ariyaratne,  
Bolhindawewa, Weragama,  
Ambalantota.

**Accused Appellant**

**Vs**

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

**Complainant Respondent**

**BEFORE** : **M.M.A.Gaffoor, J. &**  
**K. K. Wickramasinghe, J.**

**COUNSEL** : **Dr. Ranjith Fernando for the Accused Appellant**  
**Sarath Jayamanne ASG, PC. for the Respondent**

**ARGUED ON** : **27/04/2016**

**DECIDED ON** : **27 /03/2017**

**K. K. WICKRAMASINGHE, J.**

The Accused Appellant (herein after referred to as the Appellant) was indicted in the High Court of Hambantota for committing following offences:-

Charge 1:- Kidnapping of one Jayamini Gedera Suramya on or about 28<sup>th</sup> September 1997 punishable under section 354 of the Penal Code

Charge 2:-Committing Statutory Rape on the said Jayamini Gedera Suramya on or about 28<sup>th</sup> September and 26<sup>th</sup> October 1997 punishable under section 364(2)e of the Penal Code

After the conclusion of the trial, the Learned High Court judge convicted the Accused appellant for both offences and sentenced as follows:-

Charge No 1:-5years of RI

Charge No 2:- 10 years RI, Fine of Rs.2500/= and ordered to pay compensation of RS.5000 to the prosecutrix and a default sentence of 6 months.

Also, ordered both sentences to run concurrently.

During the course of argument counsel for the Accused Appellant raised following grounds of Appeal:-

- (1) Infirmities and ambiguity in the Birth Certificate of the Prosecutrix

- (2) Ambiguity in MLR particulars
- (3) Infirmary in the marking of production at the trial
- (4) Non compliance of section 283 of Code of Criminal Procedure as the trial Judge has failed to give reasons
- (5) Failure to evaluate Doc statement

This is an alleged case of Kidnapping and rape of a 15 year old girl by the Accused Appellant. According to the prosecution case, The Appellant was related to the prosecutrix who called the Appellant "BAPPA" The Appellant was married and living with a baby and his wife in the neighbourhood of the prosecutrix. The prosecutrix was living with her mother, two elder sisters and a brother. Her father had deserted her family. Her mother was a labourer who raised the family.

Since there was no television available in the house of the prosecutrix, she used to visit the house of the Appellant with the permission of her mother Anulawathi. prosecutrix even used to sleep in the Appellant's house. Subsequently the prosecutrix developed a sexual relationship with the Appellant. Though his wife came to know about the affair the Appellant prevailed over her and continued with the sexual relationship with the prosecutrix. It was continued for seven to eight months without the knowledge of the mother of the prosecutrix.

On the 28<sup>th</sup> September 1997, the Accused visited the house of the prosecutrix in the absence of the mother. Then the mother suddenly returned home and found both the Appellant and the prosecutrix in a compromising position. While the Appellant was resting on the bed, the prosecutrix was seated next to him. Then the mother (virtual complainant) slapped the prosecutrix. When the prosecutrix wanted to stop the affair, the accused and his wife castigated and assaulted her. As a result of that she had swallowed kerosene oil to commit suicide. Thereafter the accused threatened the prosecutrix with death and demanded her to elope with him.

According to the mother she had eloped on the same day but the prosecutrix mentioned that this had taken place after one week of the first incident. According to the available evidence both the prosecution witnesses mentioned the fact that the prosecutrix eloped with the accused on the 28<sup>th</sup> of September 1997. According to the prosecutrix, The accused took her to a friend of his house in Embilipitiya. They had intercourse on the very first day and even thereafter, the accused had repeated sexual intercourse with the prosecutrix. On the 27<sup>th</sup> October both of them surrendered to Ambalangoda Police.

The prosecutrix was produced to a Medical Officer and he was of the opinion that there was no hymen as it was totally destroyed. The medical evidence revealed that it was due to continuous sexual intercourse over a period of time. He further confirmed that the injuries were consistent with the history given by the prosecutrix.

When the Defence was called, the Appellant made a doc statement and mentioned that the mother of the prosecutrix was having an illicit affair with a paramour and villages were against the same. Further said, that the said paramour raped the prosecutrix, but he did not deny the incident. The accused claimed that due to the animosity over the said incident, he was falsely implicated.

It is evident that the prosecutrix was carrying on with the appellant over a period of time and thereafter eloped with him to Ebilipitiya. The evidence of IP Jayasinghe and PC Edirisinghe, reveals that they surrendered themselves to the Police station. According to medical evidence, the prosecutrix had sexual intercourse for a period of time and that confirms the version of the prosecutrix. There is neither contradictions nor omissions marked in the evidence of the prosecutrix. She had no opportunity to make a complaint to the police and as soon as she got the opportunity she has made a statement to the police. Though the appellant mentioned in his doc statement that the prosecutrix was raped by her mother's paramour, it was never put to the witness in her cross examination or even the fact that her mother was carrying on with a paramour.

Anulawathi has made a prompt complaint to the police on the following day that the prosecutrix eloped with the appellant. She also had given evidence with no contradiction or omission. Even though there is a discrepancy with regard to the name of the prosecutrix it is evident that it is only a typographical error. Birth certificate refers to as Suramya Munigedera instead Jayamunigedera. Father's name was feffered to as Jayamunigedara Piyadasa. Surnames used in public may defer from the names commonly used in villages. This cannot be considered as a vital contradiction or even this cannot be caused any prejudice to the appellant.

Since evidentially proved the fact that she had no younger sisters, no one can take into account that she had produced her sister's Birth Certificate to prove her age as less than sixteen, in order to comply with the statutory rape provision.

Above evidence amply demonstrate that the prosecutrix was less than sixteen years of age at the time of offence. The fact that the appellant and his wife well-known and close associates with the prosecutrix and her family, there is no doubt that the appellant was well aware of the fact that the prosecutrix was less than sixteen years at the time he was committing the offence.

When analyzing the doc statement it is very clear that the Appellant was merely giving a statement for the sake of it. It was only an afterthought. If it was true he would have suggested at the stage of the cross examination of prosecution witnesses. The Learned High Court Judge has observed all these and very correctly mentioned the fact that the doc statement does not create any reasonable doubt in the prosecution case.

After careful consideration of the evidence and the perusal of the judgement, vouch that no other conclusion could reach by the Learned High Court Judge other than convicting the Accused Appellant for both charges leveled against him. Therefor we have no reason to interfere with the

findings of the Learned High Court Judge. We affirm the convictions and the sentences imposed by the Learned High Court Judge.

Hereby, the appeal is dismissed

**Judge of the Court of Appeal**

I agree

**M.M.A.Gaffoor,J.**

**Judge of the Court of Appeal**