

**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 and in terms of
the Constitution of the Democratic
Socialist Republic of Sri Lanka.

The Hon. Attorney General

Attorney General's Department,
Colombo 12.

Complainant

Vs

Suppiah Karupasamy

Accused

C. A. Case No. : 187 /2013

H. C.Colombo Case No. : 3543/2006

and now between

Suppiah Karupasamy,
Remand Prisons,
Welikada.

Accused-Appellant

Vs

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

Complainant Respondent

BEFORE : P. R. Walgama, J &
K. K. Wickramasinghe, J

COUNSEL : AAL Priyantha Deniyaya for the Accused-Appellant.
Miss Anooa de Silva S S C for the Attorney General.

ARGUED ON : 22nd February 2017

DECIDED ON : 14th June 2017

K. K. WICKRAMASINGHE, J.

The Accused Appellant (herein after referred to as the Appellant) was indicted in the High Court of Colombo on the following charge:-

On or between 28th September 2003 in Colombo 14, within the jurisdiction of this court the accused committed rape on one Arsharathnam Subhashini who was under the age of 16 years which is an offence punishable under section 364 (2)(e) of the Penal Code as amended by Act No.22 of 1995.

The indictment was read over to the Accused Appellant and the trial was commenced before the High Court Judge. After trial the Learned High Court Judge of Colombo found the Appellant guilty of the charge levelled against him. Accordingly, on 05th June 2013 accused appellant was convicted and sentenced to a term of 10 years rigorous imprisonment and a fine of Rs. 5,000.00 with a default sentence of 1 month imprisonment was imposed. Furthermore compensation amounting to Rs. 50,000 was ordered to be paid to the prosecutrix (victim) and a default sentence of one year simple imprisonment was also imposed.

Being aggrieved by the said conviction and sentence the Accused Appellant, made the instant appeal to this court for the vacation of the same.

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

(1)The Learned High Court Judge failed to consider that the evidence of the prosecutrix does not inspire credence and her story is highly improbable. The prosecutrix has mentioned that the parents were not in good terms with the accused appellant and therefore this is a fabrication.

(2) The evidence of the prosecutrix and other witnesses contain lot of contradictions and thereby the credibility of the witnesses are challenged.

(3) The Learned High Court Judge has not considered the evidence of defence properly and it is a violation of right to a fair trial.

Facts of the case:-

The prosecutrix in her evidence testified that the accused appellant was her neighbour and also she referred to him as "seeya". On the day of the incident she had walked up to the tap that was located within 20 feet from her house where it was close proximity to the accused appellant's house. The appellant had called her and she had walked up to the appellant. He had asked her to come inside the house. She was taken inside a room and raped her. Thereafter she had rushed out of the house and had narrated this incident to a neighbour.

The neighbour and the mother of the prosecutrix have corroborated her evidence. The mother of the prosecutrix, Kali Amma categorically taken up the position that she had no animosity towards the accused appellant. Further testified that the appellant admitted his offence in front of the villages.

The prosecutrix was produced before the JMO on the following day at 12.50 hrs. Iw was revealed that there was a contusion on the hymen towards the right side of the hymen. The doctor was of the view that there was a penile penetration. His finding was consistent with Inter Labial Penetration and also the said injury was consistent with the history.

The investigation was conducted by the OIC of Grandpass Police Station. The appellant was handed over to him by the villagers. He had observed, at that time the appellant's lip was cracked and contused.

When perusing evidence it is abundantly clear that the credibility of the prosecutrix is established without doubt. Therefore I do not see any merit in the argument of the learned counsel for the appellant. Further the evidence of the prosecutrix is convincing.

It is pertinent to note that in the **Bhoginbhai Hirjibhai Vs State of Gujarat (1983) AIR S.C.753** stated that "*Corroboration is not a sine qua non for a conviction in a rape case. In the Indian setting, refusal to act on testimony of a victim of sexual assault in the absence of corroboration, as a rule is adding insult to injury.....*"

Further in the case of **Sunil and others Vs AG 1986(1) S.L.R. Page 230** it is stated that "*It is very dangerous to act on the uncorroborated testimony of a women victim of a sex offence, but if evidence is convincing such evidence could be acted on even in the absence of corroboration.*"

In the case of, **Radhu Vs State of Madya Pradesh (2007) 12 SC 57**, Indian Supreme Court has observed that *"the court should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case"*. Counsel for the appellant attempt to convince court that the appellant was falsely implicated but in this instant case, prosecution has amply demonstrated that it was not a false allegation.

Further, an Indian Supreme Court case **Banti Vs State of Madhya Pradesh (2004) 1 SCC 414**, it was held that *"It is true the evidence of the defence witness is not to be ignored by the courts. Like any other witness, his evidence has to be tested on the touchstone of reliability, credibility and trustworthiness, particularly when he attempts to resile from and speak against records and in derogation of his earlier conduct and behaviour. If after doing so, the Court finds it to be untruthful; there is no legal bar in deserting it"*, but when perusing judgement of the instant case, it is evident that the learned high court judge has adequately considered the defence evidence and he had not ignored the same as submitted by the counsel for the appellant.

When considering her age and background, the omissions pertaining to her statements are reasonably justified.

The Learned High Court judge who had the opportunity of watching her giving evidence had observed her credibility and he was satisfied that she was a credible witness.

Therefore when considering the above it is abundantly clear that omissions on the part of the prosecution have been adequately explained. Medical evidence corroborates the version of the prosecutrix. Therefore we have no reason to interfere with the findings of the learned High Court Judge and thereby we affirm the conviction and the sentence.

Hereby the Appeal is dismissed.

Judge of the Court of Appeal

P.R.Walgama, J

I Agree

Judge of the Court of Appeal