

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

In the matter of an Appeal under
Section 331 of the Criminal Procedure
Code.

Democratic Socialists Republic of Sri
Lanka.

Vs

Abeykoon Mudiyansele Saman
Priyankara Abeykoon

ACCUSED

CA Case No. 270/2015

HC. (Chilaw) Case No. 38/06

AND NOW BETWEEN

Abeykoon Mudiyansele Saman
Priyankara Abeykoon
Ihalakotuwell
Pallama.

ACCUSED – APPELLANT

Vs

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

RESPONDENT

BEFORE : Deepali Wijesundera J.
: L.U. Jayasuriya J.

COUNSEL : Sanjeewa Ranaweera with
Senaka Ullundupitiya for the
Accused – Appellant
A. Navavi SSC for the
Respondent.

ARGUED ON : 29th August, 2017

DECIDED ON : 15th September, 2017

Deepali Wijesundera J.

The appellant was indicted in the High Court of Chilaw under section 364 (1) of the Penal Code for committing the offence of rape on Velu Raja Lechchami and he was convicted for the said offence after trial by the learned High Court Judge and was sentenced to 10 years RI with a fine of Rs. 7,500/= . He was also ordered to pay Rs. 25,000/= as compensation to the victim.

On the day of the incident the prosecutrix along with two others namely Mary Matilda and Saroja has gone in search of her missing daughter, around ten in the night while they were waiting at a bus halt near Thoppuwa junction the appellant, who was manning a check point has questioned the prosecutrix and the other ladies, and they were taken

to the check point and asked to sit on a bench. Sometime later they were released and when they reached the bus halt the prosecutrix was asked to come back to the check point. The prosecutrix alleged thereafter she was raped by the appellant inside the bunker at gun point. The appellant in his evidence had denied the allegation of rape, but had admitted the fact that three women came near the bunker on the day in question. He further stated that they wanted the police to stop a vehicle for them to go to Colombo.

The learned counsel for the appellant argued that the contradictions in the prosecutrix's evidence were not considered by the High Court Judge which I find is not correct vide page 277 of the brief. I observe that those contradictions have no relevance to the main incident.

The appellant's counsel further stated that the prosecution failed to hold an identification parade. On perusal of the evidence of the prosecutrix I find that she had ample time and opportunity to see the appellant before the alleged incident and afterwards. Therefore there was no necessity to hold an identification parade. It was held in **Attorney General vs Joseph Aloysius 1992 (2) SLR 264** that *"An identification parade is a means by which evidence of identify is obtained. But it is certainly not the only means by which it could be established that a*

witness identified accused as the person who committed the offence. Identification can take place, depending on the circumstances even where in the course of an investigation the witness points out the person who committed the offence to the police. That evidence too would be relevant and admissible subject however to any statutory provision that may specifically exclude it at the trial.”

The appellant’s counsel argued that the test of probability was not applied by the High Court Judge when evaluating the evidence. In page 286 of the brief in his judgment the learned High Court Judge has mentioned that the said bunker had a roof and fairly high walls and if a person lies on the floor that person could not be seen from outside. Therefore this argument of the appellant also fails.

His Lordship Chief Justice Basnayake expressed his opinion in **Regina vs Dharmasena 58 NLR 15** that *“in a charge of rape, it is not in law necessary that the evidence of the prosecutrix should be corroborated.”* Chief Justice Basnayake whilst considering the merits of this case refers to two American judgments namely **Ellison vs State 19 N M 428, 144 pac 10** and **Boddie vs State 52 Ala 395, 398**. Although corroboration is not necessary in a case of this nature as stated in the above judgment, I find that there is corroboration in the instant case.

On the issue of corroboration although the medical evidence does not support her evidence prosecution witness number five namely Sumith Abeysinghe who was on duty at the said bunker on the day in question as stated in evidence that one out of the three women who came was taken inside (vide page 190 of the brief) and was kept inside the bunker for nearly two hours. This item of evidence strongly corroborates the position of the prosecutrix.

At this stage it is pertinent to refer to **section 30 of the Code of Criminal Procedure Act no. 15 of 1979.**

Section 30 states thus;

“whenever it is necessary to cause a woman to be searched the search shall be made by another woman with strict regard to decency.”

Therefore the appellant can not be heard to say that he was unaware of the said provision.

For the afore stated reasons I am not inclined to set aside a well considered judgment. The judgment dated 29/10/2015 by the learned High Court Judge of Chilaw is affirmed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya J.

I Agree.

JUDGE OF THE COURT OF APPEAL