

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

In the matter of an appeal in terms of
Article 138 (1) of the Constitution and
section 331 (1) of the Criminal
Procedure Code Act No. 15 of 1979.

Adikari Mudiyanseelage Chandrapala
alias Bappa
ACCUSED – APPELLANT

CA Case No. 35/2016

HC (Polonnaruwa) Case No. 67/2013

The Hon. Attorney General
The Attorney General's Department
Colombo.
RESPONDENT

BEFORE

: Deepali Wijesundera J.

: L.U. Jayasuriya J.

COUNSEL

: Chamindi Diloka Mannakkara

For the Accused – Appellant

Shanaka Wijesinghe D.S.G. for the

Attorney General

ARGUED ON

: 07th December, 2017

DECIDED ON

: 14th December, 2017

Deepali Wijesundera J.

The appellant was indicted in the High Court of Polonnaruwa under Section 364 (2) (e) of the Penal Code (as amended) for committing rape on a fifteen years old girl. After trial he was convicted on the second charge and sentenced to 10 years RI and a fine of Rs. 5,000/= was imposed and he was ordered to pay Rs. 50,000/= as compensation to the victim.

The story of the prosecution is that the victim after the demise of her father was sent to a Children's Home at Koslanda. Sometime later during the December school vacation her mother had brought her to the house where she was living with the appellant. The prosecutrix has testified that the accused appellant had sexual intercourse with her on

two occasions, once at home and on the second time in a teak forest. She has not told the mother about this incident immediately but two or three days later she has told the mother. She has been fifteen years of age at this time. Therefore the question of consent does not arise. The evidence reveals that the first complaint was made about 1 ½ months after the incident and the victim has explained the delay that she did not tell anyone out of fear.

In **Sumanasena vs AG, 1999 3 SLR 137** it was held that, *“Just because a witness is a belated witness, the court ought not to reject his testimony on that score alone and that the delay should be looked into”*. We find that the delay has been adequately explained by the victim.

The medical evidence shows that there was an old healed tear, in the hymen. Therefore the medical evidence corroborates the prosecutrix's evidence.

The appellant making a dock statement had denied the incident. Although there is no burden on the part of the accused appellant to prove his innocence still he has not stated as to why he was wrongly implicated.

He has merely denied the whole incident. The learned High Court Judge has properly analysed his dock statement and has rejected his evidence.

On perusal of the prosecutrix's evidence we find that not a single contradiction or omission have been marked. We find that her evidence passes the tests of probability and consistency.

For the afore stated reasons we decide to affirm the conviction and the judgment dated 24/03/2016. The appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya J.

I Agree.

JUDGE OF THE COURT OF APPEAL