

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

In the matter of an appeal under 154
(p) of the Constitution read with
section 331 of the Code of Criminal
Procedure Act No. 15 of 1970.

Attorney General

COMPLAINANT

Vs

Manannalage Gunasiri alias Kalu
Bappa alias Kaluwa

ACCUSED

Case No. CA 97/2017

HC (Kegalle) Case No. HC 2389/2006 AND NOW BETWEEN

Manannalage Gunasiri alias Kalu
Bappa alias Kaluwa

ACCUSED – APPELLANT

Vs

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

COMPLAINANT - RESPONDENT

BEFORE

: Deepali Wijesundera J.

: Achala Wengappuli J.

COUNSEL

: Rex Fernando for the Accused
Appellant.

Haripriya Jayasundera SDSG for
the Attorney General

ARGUED ON

: 28th September 2018

DECIDED ON

: 19th October, 2018

Deepali Wijesundera J.

The appellant was indicted in the High Court of Kegalle for committing rape under section 364 (2) (f) of the Penal Code. After trial he was convicted and sentence to ten years RI with a fine of Rs. 5,000/= running a default term of three months. He was also ordered to pay Rs. 50,000/= as compensation to the victim with a default sentence of two years.

The prosecution case was that the victim Nilmini was a grown up woman but a mentally disabled person. A Psychiatrist's report was called

by High Court to ascertain her ability to testify in court, which had stated that she is capable of testifying in court.

On the day in question she has been alone at home where she lived with her father when the appellant Kaluwa had come and dragged her into his tea plantation. She had said the appellant had sexual intercourse with her but due to her disability she had failed to give the exact date on which this happened. When the father came home she has informed him about the incident and he has told the aunt what had taken place and the victim had been having a mistaken idea that the aunt saw what took place. The father had gone to see the place where the alleged incident took place shown by the victim and had observed that the grass had been crushed. Father of the victim Nandasena while giving evidence had stated the victim was of the habit of narrating everything that happened while he was away from the house and that he could understand her very well.

Nandasena had gone and confronted the appellant and then gone and made a complaint to the police. By the time the police came to inspect the scene the appellant had got the scene cleared. This had been stated in the police evidence.

Witness Seelawathi while giving evidence has said that the victim told her about the incident and that she did not remember the month but the date was a 18th on which day she gave alms to the temple.

On the 21st of June 2001 the victim was examined by the Judicial Medical Officer. While giving evidence he has stated that the victim described to him that "Kaluwa" took her to the jungle and engaged in sexual intercourse. He had said that merely because there were no injuries he can not rule out that an incident had taken place a day or two prior to the examination. He has also informed court that he observed that the victim was not used to having sexual intercourse frequently. The Psychiatrist had given evidence to state that with the kind of mental retardation the victim could not have given a valid consent for sexual intercourse nor could she have understood the repercussions.

The learned counsel for the appellant argued that the victim had sexual intercourse with other men prior to this incident and due to a land dispute with him his name had been implicated by the victim's father. Having prior sexual relations with another man is not a ground for appeal. The victim was not in a proper mental condition to give consent according to both doctors therefore the question of giving consent does not arise.

There is no evidence to say there had been a land dispute between the parties. These grounds of appeal have no merit.

The counsel for the appellant citing the judgment in Sathasivam murder case argued that the learned High Court Judge failed to understand what subsequent conduct of an accused is. It is the counsel for the appellant who has failed to understand the subsequent conduct of the appellant and not the learned High Court Judge. The appellant after he was confronted by the father had cleared the scene of the incident. The father while giving evidence had stated very clearly what he saw this piece of evidence is not contradicted.

The appellant's counsel cited the judgment in **AG vs Priyantha CA (PHC) APN 19/99** to say that according to medical evidence the appellant could not have been convicted for rape.

This judgment is totally irrelevant to the instant case. The circumstances are different and it does not apply to this case.

The learned counsel for the appellant failed to raise specific grounds of appeal. No legal argument had been made by the appellant to set aside his conviction.

For the afore stated reasons we are of the view that this appeal can not be allowed. We affirm the learned High Court Judge's judgment delivered on 31/05/2017 and affirm the conviction. Appeal is dismissed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

Achala Wengappuli J.

I agree.

JUDGE OF THE COURT OF APPEAL