

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

Hon. Attorney General

(Complainant)

Vs

Wijesinghe Mapa Hamilage Priyankara

(Accused)

Case No. CA 253/2016

HC (Kuliyapitiya) Case No. HC13/2015

**AND NOW BETWEEN**

Wijesinghe Mapa Hamilage Priyankara

(Accused – Appellant)

Vs

Hon. Attorney General

Attorney General's Department

Colombo 12.

(Complainant – Respondent)

BEFORE

: **Deepali Wijesundera J.**

: **Achala Wengappuli J.**

COUNSEL

: Tenny Fernando for the

Accused – Appellant

Anoopa De Silva S.S.C

for the Attorney General

ARGUED ON

: 02<sup>nd</sup> May, 2019

DECIDED ON

: 17<sup>th</sup> May, 2019

Deepali Wijesundera J.

The appellant was indicted in the High Court of Kuliypitiya for kidnapping and rape punishable under section 357 and section 364 (1) of the Penal Code. After trial he was convicted on both charges. He was sentenced to four years RI with a fine of Rs. 10,000/= with a default sentence of two years for the first charge. For the second charge he was sentenced to twelve years RI and he was also ordered to pay a fine of Rs. 10,000/= running a default term of two years. In addition to the above sentences he was ordered to pay Rs. 1,00,000/= as compensation to the victim with a default sentence of two years.

The evidence of the prosecution was that on the day of the incident the prosecutrix who lived with her mother in a small hut heard a noise outside and has gone out to investigate. She was dragged into a nearby compound. Her mother who tried to raise cries was threatened. She has identified the person who dragged her and raped her as the fish monger from the next village. She was raped by the said person whom she had said she identified while been dragged and raped. The appellant has threatened her and told her not to tell anyone. She has waited till dawn and gone home. She has found the mother hiding inside the house. She has gone to the police station with a relation called Chandani and made

a complaint. She has identified the appellant by name as well when making the complaint.

The medical evidence has gone unchallenged at the trial and according to the medical evidence the victim had injuries on her body and rape was not ruled out. The doctor has said she has been raped.

The appellant making a dock statement has denied the incident and has said he attended the wedding of one of his friends namely Cyril on that night. The two friends who gave evidence on behalf of the appellant have said they all attended the wedding of the daughter of Thillake.

The points of argument taken up by the learned counsel for the appellant were that the appellant was not properly identified by the victim. The prosecutrix while giving evidence has said the appellant came to their road to sell fish and that she knew him by name. He argued that it could have been a case of mistaken identity but the defence did not put this to the victim in the High Court. The defence has not suggested in the High Court that the appellant was not properly identified by the prosecution. Therefore we find that the learned High Court Judge has carefully

analysed the evidence and come to the correct finding on the issue of identification.

In *Sigera vs Attorney General* 2011 vol. 1 page 201 it was held;

*“To apply Turnbull principles the identification had to be made under difficult circumstances. In this case, although the incident took place during night, there was ample light shed by the bulb of the lamp post that was burning. There was no congregation of a multitude of persons in a crowd but only the Accused Appellant and the deceased. In order to inflict the injuries on the deceased, the assailant had to come very close to the deceased. The injuries could not have been caused from a distance. According to the Government Analyst the shooting had taken place from a short distance. In fact it had to be done at close quarters and the distance couldn't have been more than an arm's-length. A bulb was lit and the Appellant was a well known person who lived in the neighborhood, in the same vicinity for a long time. These uncontroverted facts prove that there was ample light and ample time for the deceased to identify the Appellant.”*

The other point of argument taken by the appellant's counsel was that the learned High Court Judge failed to consider the evidence of the defence in the High Court and the defence of alibi.

On perusal of the learned High Court Judge's judgment we find that the learned High Court Judge has analysed the defence evidence when arriving at his finding.

For the afore stated reasons we decide that this court is not inclined to set aside a well considered judgment. Judgment and conviction dated 05/12/2016 is affirmed and the appeal is dismissed.

**JUDGE OF THE COURT OF APPEAL**

**Achala Wengappuli J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**