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

In the matter of an Appeal in terms of the Code of Criminal Procedure Act No. 15 of 1979 and provisions of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 read with the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. Case No: **CA 184/2014**

H.C. Badulla Case No: **49/2011**

Democratic Socialist Republic of Sri Lanka

Complainant

Manatunga Mudiyanselage Nishantha Manatunga

Accused

AND NOW BETWEEN

Manatunga Mudiyanselage Nishantha Manatunga

Accused-Appellant

Vs.

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

Complainant-Respondent

BEFORE	:	K. K. Wickremasinghe, J. K. Priyantha Fernando, J.
COUNSEL	:	AAL Tenny Fernando for the Accused-Appellant Lakmali Karunanayake, DSG for the Complainant-Respondent
ARGUED ON	:	07.05.2019 & 13.05.2019
WRITTEN SUBMISSIONS	:	The Accused-Appellant – On 09.03.2018 The Complainant-Respondent– On 10.12.2018
DECIDED ON	:	01.11.2019

K.K.WICKREMASINGHE, J.

The Accused-Appellant has filed this appeal seeking to set aside the judgment of the Learned High Court Judge of Badulla dated 10.11.2014 in case No. 49/2011.

Facts of the case:

The accused-appellant (hereinafter referred to as the 'appellant') was indicted in the High Court of Badulla, for committing rape on one Wasana Sandamali on or about 28.11.2008 at Bandarawela, an offence punishable under section 364 (1) of the Penal Code as amended. After the closure of the case for the prosecution, when the defence was called, the accused opted to testify and three more witnesses testified for defence. At the conclusion of the trial, the Learned High Court Judge convicted the accused for the offense of rape, by judgment dated 10.11.2014 and sentenced the appellant as follows;

1. A term of 12 years rigorous imprisonment.

2. A fine of Rs 10,000/= with a default term of six months simple imprisonment.
3. Compensation of Rs. 150,000/= to be paid to the victim and if default one year term of rigorous imprisonment.

Being aggrieved by the said judgment, the appellant preferred this appeal.

The Learned Counsel for the appellant submitted following grounds of appeal, in the written submissions and submitted that the conviction is not safe.

1. The Learned Trial Judge misdirected himself by failure to consider that the version of the prosecutrix is highly improbable when she states that she had to pretend she is going to see a movie with the accused appellant who raped her.
2. The Learned High Court Judge has completely misdirected himself with regard to the conflict of evidence between medical expert and the prosecutrix which completely diminish the tenability of the prosecution version and thereby casts a doubt on the prosecution case.
3. The Learned High Court Judge has misdirected himself with regard to the *per se* contradictions in the testimony of the prosecutrix and her evidence is not corroborated by any material witnesses.
4. The Learned High Court Judge misdirected himself with regard to the plea of alibi and failed to duly analyze the plea of alibi according to established principles of law and thereby the conviction is bad in Law.
5. The Learned High Court Judge misdirected himself by failure to evaluate the defence evidence judicially and thereby caused miscarriage of justice and conviction is therefore bad in Law.
6. The Learned High Court Judge misdirected himself by speculating evidence which are not in record and thereby the conviction is bad in Law.

The incident is summarized as follows;

The prosecutrix, Wasana Sandamali (hereinafter referred to as the 'prosecutrix' and/or 'PW 01') was an 18 year old woman who was separated from her husband. The prosecutrix was living with her parents at the time of the incident. The accused-appellant (hereinafter referred to as the 'appellant') was one of her neighbours. On the day in question, her parents had left for work and her sister had gone to school and the prosecutrix was alone at home. The appellant had walked in to the room, where the prosecutrix was reading a book and asked her whether she was feeling lonely without her husband. Thereafter, the appellant had thrown her on the bed and had removed her underwear and raped her. The prosecutrix had tried to escape, but the appellant had continued the act until ejaculation. The prosecutrix had then escaped and had gone to her grandmother's house which was nearby. She had returned to her house about 15 minutes later and the appellant too had returned to her house. The appellant had told her that he would find her employment and give money and asked her not to tell anyone about this incident. Thereafter, the appellant had suggested the prosecutrix to come to see a movie. The prosecutrix had agreed and gone out of the house to board a bus and the accused too had boarded the same bus. When the bus reached Bandarawela town, the prosecutrix had got out of the bus and run to her mother's work place and had told her about the incident in question. The prosecutrix had referred to the appellant as Mahathun Mama and he was known to the prosecutrix as a neighbour. Thereafter, the prosecutrix had also met her father in the town and he had asked the mother and the prosecutrix to go to Police. Accordingly, around 3.45pm on the same day, they had lodged a complaint at the Police Station, Welimada.

Subsequently, the prosecutrix was referred to the Judicial Medical Officer of Badulla Hospital. The JMO testified at the trial as prosecution witness No. 07 and the medical report was marked as 'P 01'.

The Learned Counsel for the appellant contended that the Learned Trial Judge misdirected himself by failing to consider the fact that the version of the prosecutrix is highly improbable when she stated that she had to pretend to go for a movie with the appellant who raped her. The prosecutrix, in her evidence, has explained the reason why she had to pretend to go for a movie with the appellant. The prosecutrix testified that she agreed to go for a movie since she felt that the appellant would not let her leave the house (Page 32 of the brief). The Learned High Court Judge was of the view that any victim in a situation like this would try to inform the incident to a close relative and therefore, the prosecutrix in the instant case had acted in the same manner which is justifiable. PW 3 Nalini Mallika (victims' mother) testified that, on the day in question, the prosecutrix had come to meet her at the hotel where she worked and told mother that the appellant harassed her. There had been no contradiction marked in her evidence. Therefore, I am of the view that the prosecutrix had explained her reason to act under a pretense, to go for a movie with the appellant, to the satisfaction of Court. Therefore, the 1st ground of appeal should fail.

Now I wish to consider the 2nd and 3rd grounds of appeal together. It is argued for the appellant that there was a conflict of evidence between the medical expert and the prosecutrix and the evidence of the prosecutrix is not corroborated by any material witnesses. The JMO, at the trial, reproduced the short history of the prosecutrix, in which she had described the incident in detail. The JMO had observed that there were no new injuries in the hymen of the prosecutrix and however, there was a contusion on her labia. The JMO testified that injuries of the

prosecutrix were 100% consistent with the short history given by the victim (Page 55 of the brief). At the same time, it is important to mention that our law, as it stands today, does not require corroboration from a prosecutrix unless her version of evidence appears to be unreliable and inconsistent.

In the case of **Sunil and another V. The Attorney General (1986) 1 Sri L.R 230**, it was held that,

> *"It is very dangerous to act on the uncorroborated testimony of a woman victim of a sex offence but if her evidence is convincing such evidence could be acted on even in the absence of corroboration..."*

In the case of **Premasiri V. Attorney General (2006) 3 Sri L.R 106**, Justice E. Basnayake observed that,

> *"The learned counsel complained that the accused was convicted on uncorroborated evidence. There is no rule that there must in every case, be corroboration before a conviction can be allowed to stand. (Gour on Penal Law of India 11th Edition page 2657 quoting Raghobgr Singhe vs. State(2); Rameshwar, Kalyan Singh vs. State of Rajasthan(3)). It is well settled law that a conviction for the offence of rape can be based on the sole testimony of the prosecutrix if it is reliable, unimpeachable and there is no infirmity.* ***(Bhola Ram vs. State of Madhya Pradesh (4))****. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particular. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestation.* ***State of Punjab vs. Gurmit Singhe(5)****.*

The rule is not that corroboration is essential before there can be a conviction in a case of rape, but the necessity of corroboration as a matter of prudence, except where the circumstances make it unsafe to dispense with it, must be present to the mind of the judge. (Schindra Nath Biswas vs. State(6) ... " (Emphasis added)

In the case of **B. Bhoghinbhai Hirjibhai V. State of Gujarat (AIR) 1983 SC 753,** it was held that,

> *"...in the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule is adding insult to the injury."*

In **Premasiri V. The Queen [77 N.L.R 86]** it was held that,

> *"In a charge of rape it is proper for a Jury to convict on the uncorroborated evidence of the complainant only when such evidence is of such character as to convince the Jury that she is speaking the truth..."*

In light of above, it is understood that law does not prevent a Judge from entering a conviction on a sole testimony of a victim, if the Judge is completely satisfied that the victim is speaking the truth and the testimony of the victim is reliable.

It is pertinent to note that there had been no contradictions marked in the testimony of the prosecutrix in the instant case. Even though the Learned Counsel for the appellant at the High Court, made several suggestions to the prosecutrix that she was making a false allegation, he was unable to mark any major contradiction which go to the root of the case. Further, the version of the prosecutrix was corroborated by the testimonies of her parents and the JMO and the police evidence. I am of the view that the Learned High Court Judge was correct in being

satisfied that the testimony of the prosecutrix was reliable and credible, in such a backdrop.

Therefore, I see no merits in the above mentioned grounds of appeal.

Now I wish to consider the 4th and 5th grounds of appeal which basically address the issue of failure to evaluate the defense evidence judicially by the Learned High Court Judge.

The appellant denied his involvement in the incident in entirety. The appellant testified that on the day in question, he went to his vegetable plot around 9.00 am and returned home around 1.00pm. The wife of the appellant testified that she accompanied him. Two other witnesses who lived in neighbourhood testified that they did not hear any screaming for help, on the date of the incident even though they were in a close proximity at that time. I observe that the Learned High Court Judge had evaluated the evidence adduced on behalf of the appellant at pages 124 to 126 of the brief. The Learned High Court Judge was of the view that there was no cogent evidence to prove that the above said two witnesses were in fact in proximity at the time of the incident and the evidence of the defence did not discredit the PW 01 (prosecutrix) or other prosecution witnesses. I observe that the Learned High Court Judge has given reasons for his decision to refuse the defence version and therefore, I see no merits in the 4th and 5th grounds of appeal as well.

The Learned Counsel for the appellant submitted that the Learned High Court Judge misdirected himself by speculating evidence which are not in record. However, the Learned Counsel has not elaborated or specified what those evidence were. Upon perusal of the judgment, I am unable to find any such evidence, which were not in record, evaluated by the Learned High Court Judge. Therefore, the final ground of appeal too should fail.

Further, I am mindful of the fact that the Learned High Court Judge who delivered the judgment had the benefit of assessing the demeanour and deportment of the witnesses from the very beginning of the trial.

In the case of **State of Uttar Pradesh V. M. K. Anthony [AIR 1985 SC 48],** it was held that,

> *"While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief..."*

In the case of **Attorney General V. Sandanam Pitchi Mary Theresa [S.C. Appeal No: 79/2008 – Decided on 06.05.2010]**, it was held that,

> *"Whilst internal contradictions or discrepancies would ordinarily affect the trustworthiness of the witness statement, it is well established that the Court must exercise its judgment on the nature tenor of the inconsistency or contradiction and whether they are material to the facts in issue. Discrepancies which do not go to the root of the matter and assail the basic version of the witness cannot be given too much importance (Vide, Boghi Bhai Hirji Bhai v. State of Gujarat, AIR 1983 SC 753).*
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> *Witnesses should not be disbelieved on account of trifling discrepancies and omissions (Vide, Dashiraj v. the State AIR (1964) Tri. 54). When contradictions are marked, the judge should direct his attention to whether*

they are material or not and the witness should be given the opportunity of explaining that matter (Vide, State of UP v. Anthony AIR 1985 SC 48; A.G. v. Visuvalingam 47 NLR 286)..."

It is trite law that the appellate Court will not interfere with the findings of the Trial Judge who in fact has a better opportunity of observing the demeanour and deportment of witnesses, unless it is proved that the Trial Judge was misdirected.

I observe that, in the instant case, the Learned High Court Judge has made a well-reasoned judgment evaluating all the evidence placed before him and I see no reason to interfere with the same. Therefore, I affirm the conviction and the sentence imposed on the appellant, dated 10.11.2014, by the Learned High Court Judge of Badulla.

The appeal is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

K. Priyantha Fernando, J.

I agree,

JUDGE OF THE COURT OF APPEAL

Cases referred to:

1. Sunil and another V. The Attorney General (1986) 1 Sri L.R 230
2. Premasiri V. Attorney General (2006) 3 Sri L.R 106
3. B. Bhoghinbhai Hirjibhai V. State of Gujarat (AIR) 1983 SC 753
4. Premasiri V. The Queen [77 N.L.R 86]
5. State of Uttar Pradesh V. M. K. Anthony [AIR 1985 SC 48]
6. Attorney General V. Sandanam Pitchi Mary Theresa [S.C. Appeal No: 79/2008]