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

In the matter of an Appeal made under
Section 331 of the Code of Criminal
Procedure Act No.15 of 1979

CA 122-123/2017

HC/Anuradhapura/137/2007

1. Meegahapala Arachchige Asanka
Prabath
2. Rankoth PEDIYA Durayalage Saman

ACCUSED-APPELLANT

vs.

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

COMPLAINANT-RESPONDENT

BEFORE : **Devika Abeyratne,J**
P. Kumararatnam,J

COUNSEL : **Mr.Amila Palliyage with Mr.Duminda Alwis
and Ms.Ruwanthi Doralagoda for the
1st Appellant.**
**Mr.Neranja Jayasinghe with Ms.Isansi
Danthanarayana for the 2nd Appellant**
**Ms.Anoopa de Silva SSC for the
Respondents.**

ARGUED ON : **16/02/2021**

DECIDED ON : **31/03/2021**

JUDGMENT

P. Kumararatnam J

The above-named Accused-Appellants (hereinafter referred to as the Appellants) were indicted by the Attorney General in the High Court of Anuradhapura on the following charges namely;

- I. On or before the 27th April 2004, within the jurisdiction of this court abduction of one Edirisinghe Pedilage Kusumalatha in order to have illicit intercourse which is an offence punishable under Section 357 of the Penal Code read with Section 32 of the Penal Code.
- II. At the same time, place and during the course of the same transaction the 1st accused joined with the 2nd accused as a gang by raping the aforesaid Edirisinghe Pedilage Kusumalatha or aiding or abetting the 2nd accused in order to commit gang rape committed an offence punishable under section 364(2) of the Penal Code as amended by the Act No. 22 of 1995.
- III. At the same time, place and during the course of the same transaction the 2nd accused joined with the 1st accused as a gang by raping the aforesaid Edirisinghe Pedilage Kusumalatha or aiding or abetting the 1st accused in order to commit gang

rape committed an offence punishable under section 364(2) of the Penal Code as amended by the Act No. 22 of 1995.

After the trial the Appellants were convicted as charged for the 1st count and each of them were sentenced to five years RI and a fine of Rs.5000/-. In default 03 months RI imposed.

For the 2nd count the 1st Appellant was sentenced to 12 years RI with a fine of Rs.5000/-. In default three months simple imprisonment imposed. In addition, Rs.75000/- was imposed as compensation payable to the victim with a default sentence of one year RI. The Learned High Court Judge ordered the sentences imposed for count one and count two to run concurrently.

For the 3rd count the 2nd Appellant was sentenced to 12 years RI with a fine of Rs.5000/-. In default three months simple imprisonment imposed. In addition, Rs.75000/- was imposed as compensation payable to the victim with a default sentence of one year RI. The Learned High Court Judge ordered the sentences imposed for count one and count three to run concurrently.

Being aggrieved by the aforesaid conviction and sentence the Appellants preferred this appeal to this court.

The Learned Counsels for the Appellants informed this court that the Appellants have given consent to argue this matter in their absence due to the Covid 19 pandemic.

The Counsels for the Appellants agreed to argue jointly on the following grounds of appeal:

- a. The learned trial judge erred in law and facts by convicting the Appellants for charge of rape on the uncorroborated testimony.
- b. The learned trial judge has failed to consider that the testimony of the doctor who is an independent witness contradicts the evidence of the prosecutrix.
- c. The findings of the learned trial judge in the impugned judgment are untenable and contrary to the well settled principles of law.
- d. The learned trial judge has failed to consider the medical evidence in the correct perspective.

In this case the prosecutrix is a married woman with grown up children. At the time of the incident, she was living with her husband in a wattle and daub house that was built in their chena cultivation in the Neelabemma area. Her son was living separately at Yaya 18. On the date of the incident at about 10.00pm the Appellants had gone to prosecutrix's house and called her husband. She had identified the Appellants with the help of a kerosene oil bottle lamp and a torch. When she had inquired as to why they came to her house, the 1st Appellant had told her that they need a coir rope to tie up some firewood. When she had replied in the negative, the Appellants had then entered her house, occupied the veranda and consumed liquor for about two hours. As the husband of the prosecutrix did not join them both had left the house thereafter.

In a short while the 2nd Appellant had come back and asked for a cup from the prosecutrix's husband. When the prosecutrix had given a cup the 2nd Appellant had held her hand and both struggled in front of the house. At

that time 1st Appellant had come there and kicked the prosecutrix several times. Thereafter one of the Appellants had removed his sarong and placed it around the prosecutrix's head. In the meantime, the prosecutrix's husband had been tied up by the Appellants. Thereafter, the prosecutrix had been dragged across a water way and placed on top of a rock in the Wilpattu jungle. At that time the Appellants were armed with a bottle and a knife. Thereafter the 1st Appellant had stabbed her with the knife and 2nd Appellant had dealt a blow on her head with the bottle.

Thereafter, both the Appellants had raped the prosecutrix for about two hours on the rock. When the Appellants fell asleep, she escaped from their custody and walked in to the Wilpattu jungle and managed to come up to the Neelabemma bunt and prayed for help. She was taken to Anuradhapura Hospital and warded there for about five days. The doctor had only examined her body. She had given a statement to Nochchiyagama Police while receiving treatment in the hospital.

In the 1st ground of appeal advanced by the Appellants contented that the learned trial judge erred in law and facts by convicting the Appellants for charge of rape on the uncorroborated testimony of the prosecutrix.

Justice Dheeraratne in **Sunil and others v. Attorney General** [1986] 1 Sri.L. R 230 held that:

“Corroboration is only required or afforded if the witness requiring corroboration is otherwise credible. If the evidence of witness requiring corroboration is not credible his testimony should be rejected and the accused acquitted. Seeking corroboration of a witness's evidence should not be used as a process of inducing belief in such evidence where such evidence is not credible.”

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 the absence of corroboration.”

In **Premasiri v. Attorney General** [2006] 3 Sri.L.R held that:

“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”.

In the evidence of the prosecutrix she had said that she was raped by the Appellants for about two hours taking turns. When the Appellants had fallen asleep, she had escaped from their custody and managed to arrive near a hermitage and lost consciousness. Thereafter she had regained consciousness at the Anuradhapura hospital.

In the cross examination the defence had marked a vital contradiction (V6) with regard to the dress of the prosecutrix. At the non-summary inquiry, the prosecutrix had said that she was naked when she reached the Neelabemma bunt. But in the High Court trial she had said that her dress was intact and gave it to the police on the following day. The prosecution had marked her underskirt as P01. In her re-examination it was revealed that the police had recovered P01 on 18/01/2005 nearly after about a year.

The prosecutrix's position was that she was unconscious when she reached near the bunt and unable to say how she had come to the hospital. The police officer who first met the prosecutrix near the bunt had categorically said that he had spoken to her at that time and after inquiry he had got down her husband and handed her over to him to be sent to the hospital. Further the officer had said when he first saw the prosecutrix she was wearing a red coloured blouse without buttons and a black coloured underskirt.

As PW04, the husband of the prosecutrix had passed away before the High Court trial, his evidence given in the non-summary inquiry was marked as P4 under Section 33 of the Evidence Ordinance. In his evidence he had said that when he saw his wife no clothes were found on her body except a blue coloured clothe that had been put over her body. His evidence is fully corroborated by PW03 the son of the prosecutrix.

PW03 in his evidence said that he could speak to his mother only after two days of the incident. In his evidence nowhere he mentioned that his mother had told him about rape committed by the Appellants on her. According to him the prosecutrix had only told him that the Appellants had abducted her, kept on a rock in the Wilpattu jungle and she escaped from their custody when the Appellants had fallen asleep. In his evidence, marked as P04, the husband of the prosecutrix too had not mentioned about the rape incident.

The appeal grounds 2nd and 4th are considered together as they are connected to medical evidence. In those grounds the Appellants contented that the learned trial judge has failed to consider that the testimony of the doctor who is an independent witness contradicts the evidence of the prosecutrix and has failed to consider the medical evidence in the correct perspective.

The doctor in his evidence said that he had only examined the body of the prosecutrix as in the history to the doctor she had only mentioned about the physical assault by the Appellants and has failed to mention about sexual assault. He had further said that she was produced before him after treatment for her injuries. Further the prosecutrix has not mentioned to her family members including her husband about the alleged sexual assault that has been committed by the Appellants. Considering nature of this case and the evidence presented, failure to adduce medical evidence pertaining to rape charges is a serious lapse on the part of the prosecution.

The final ground advanced by the Appellants is that the findings of the learned trial judge in the impugned judgment are untenable and contrary to the well settled principles of law.

Although the learned trial judge in his judgment at page 252 admitted that considering corroborating evidence in a rape is a matter of prudence and caution, he has failed to analyse the evidence in a correct perspective as argued by the Appellants. Although the learned High Court Judge had stated that the prosecutrix's evidence has been well corroborated by the other evidence, when analysing the evidence presented by the prosecution the conclusion reached by the trial judge is not tenable.

In this case all appeal grounds which are raised by the Appellants have merits. The prosecutrix had failed to mention to her husband, her son and the doctor that she was raped by the Appellants on the date of the incident. Therefore, her evidence is not convincing to act without corroboration.

When analysing entirety of the evidence presented, we are of the view that the prosecution had proved the 1st charge against the Appellants beyond reasonable doubt. Hence, we affirm the conviction and sentence imposed on them with regard to the 1st count. We further order the sentence imposed on 1st count be operative from the date of conviction namely 13/07/2017.

As the prosecution has failed to prove the 2nd charge against the 1st Appellant and the 3rd charge against 2nd Appellant beyond reasonable doubt, we set aside the conviction and the sentence imposed on 2nd and 3rd charges and acquit the 1st Appellant from 2nd count and acquit the 2nd Appellant from 3rd count.

The Registrar is directed to send a copy of this judgment to High Court of Anuradhapura along with the original case record.

The appeal is partly allowed.

JUDGE OF THE COURT OF APPEAL

DEVIKA ABEYRATNE, J

I agree.

JUDGE OF THE COURT OF APPEAL