

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

In the matter of an appeal under and in terms of section 331 of the code of Criminal procedure Act No15 of 1979 (as amended) read with Article 138 of the constitution of the Democratic Socialist Republic of Sri Lanka.

**CA Appeal No:**  
**HCC 254/2018**

**High Court of Kandy**  
**Case No: HC 36/2010**

The Democratic Socialist Republic of Sri Lanka

**Complainant**

**Vs.**

Jayawardanalage Hemantha Perera

**Accused**

**AND NOW BETWEEN**

Jayawardanalage Hemantha Perera

**Accused-Appellant**

**VS.**

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

**Respondent**

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

**Counsel** : Chathu Amarathunga with Oshaka  
Danthanarayana for the Accused-Appellant

Rajinda Jayaratne, SC for the State

**Written**  
**Submissions On** : 22.06.2019 (by the Accused-Appellant)  
29.01.2019 (by the Respondent)

**Argued On** : 29.07.2021

**Decided On** : 26.10.2021

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**Devika Abeyratne,J**

In this case the learned High Court Judge of *Kandy* has convicted the accused appellant after trial for committing rape on one *Emily Saroja Jeyaraj* on or about 23.06.2008 and sentenced to 10 years rigorous imprisonment and Rs 5000/= fine with a default sentence of 6 months and compensation of Rs 50,000/- with a default sentence of one year rigorous imprisonment.

Aggrieved by the conviction and the sentence the appellant has preferred this appeal to this Court setting forth the following grounds of appeal.

1. The items of evidence are not sufficient to prove the prosecution's case against the appellant beyond reasonable doubt.
2. The rejection of evidence of the accused is wrongful and the learned Judge of the High Court has failed to correctly apply the principles governing the Dock Statement.

3.The rejection of the contradictions and omissions regarding the evidence of PW 1 is erroneous in law.

4.The rejection of Medical evidence is erroneous in law.

At the hearing of the appeal the Counsel for the appellant informed Court that he has been instructed by the appellant to argue this matter in his absence due to the covid pandemic. The appellant who was connected through Zoom technology at the argument reiterated same.

The facts of the case albeit briefly are as follows;

The victim PW 1, a Tamil lady of 67 years who had suffered a stroke a few years ago and was recovering from partial paralysis had been alone in her home in *Augustawatta* Kandy as her husband had gone to Colombo that morning. The accused appellant known to the victim and identified as the *baas* who attended on the water tank and repaired the front and back doors of their house had come around 11.15 am on the 23<sup>rd</sup> of June 2006 and inquired about her husband and was informed that he had gone to Colombo and expected back home that night.

PW 1 has testified that she had her lunch after the appellant who spoke with her through the open window left and when she was eating a piece of *papaw* she had seen the accused coming towards her with a knife threatening her. When he grabbed her dress she has fallen near the dining table, thereafter, he had carried her to the bedroom and forcefully raped her. At the beginning of the assault on her she had cried out for help as evidenced in pages 75, 80,83 and 92 of the brief. In page 108 she has specifically stated as follows;

ප්‍ර : තමා බේරීමට උත්සාහ කලාද?

උ : බේරිලා කොහේද යන්නේ ජනේල තිබුනා.

ප්‍ර : තමා අහල පහල අයට ඇහෙන්න කැගැහුවේ නැද්ද?

උ : පිහියෙන් අනින්න එන විට මාව බේර ගන්න කියා කැගැහුවා කවරුවත් ආවේ නැහැ.

Thus, her evidence is that the appellant threatened her with a knife and she feared for her life. She has given clear, cogent and convincing evidence how the incident had occurred. At one point she has testified that if she had a knife in hand she would have killed him. (page 90)

She has informed her husband by telephone of the alleged rape soon after the incident and he had told her that he will ask a lady from a close by boutique to come and stay with her until he returned. He has come in a three wheeler from Colombo with their daughter and on the same evening lodged a complaint to the Kandy Police and PW 1 had been admitted to the *Kandy* Hospital.

It was contended by the Counsel for the appellant that PW 1's evidence was not corroborated by the lady who was asked to come and be with her.

In *Sunil and another vs The Attorney General 1986 (1) SLR 230* it was held that if the evidence of a woman victim of a sex offence is convincing, such evidence could be acted upon in the absence of corroboration.

In *Sumanasena vs Attorney General (1999) 3 SLR 137* it was held that

*“ ...evidence must not be counted but weighed and the evidence of a single witness if cogent and impressive could be acted upon by a court of law”.*

In the instant case soon after the incident PW 1 had informed her husband of the rape and he has given evidence corroborating the evidence of PW 1. The evidence of both husband and wife is cogent and no doubt has arisen about the veracity or truthfulness of that evidence. Thus, the ground of appeal that the items of evidence are not sufficient to prove the prosecution case beyond reasonable doubt cannot stand.

The evidence of PW 1 is corroborated by medical evidence. PW 3, is the doctor who examined the victim. The Medico Legal Report is marked as P2. In the short history given by the victim in P2 it refers to her being raped by the *baas* and his name *Hemantha* is given. The microbiology report for vaginal semen where *Spermatozoa* was observed is marked as P4. But no DNA test has been done.

The doctor has made some observations about her medical and her physical condition, of her being partly paralysed a few years ago and how that had impacted on the victim with regard to the incident.

It was elicited from the prosecution witnesses that the appellant lives about 100 to 150 yards away from the house of the victim and well known to all the family members and usually referred to as the *baas*.

At the trial, it was contended that the evidence of the prosecution witnesses was that there were many *baases* in the area and there was no proper identification. The argument for the appellant was, when the victim had stated she was unaware of the name of the *baas* his name "*Hemantha*" cited in the police statement is erroneous.

The victim PW 1 had admitted not knowing the name of the appellant who she referred to as the *baas*. However, she has specifically stated the work he had done in the house and thus the identification has been beyond a doubt. Therefore, there was no issue about the identification of the person and the only issue was his name. A plausible explanation has been given by PW 1 and her husband PW 2, that they got to know the name of the *baas* as *Hemantha* from their daughter, who came back from *Colombo* with the father, after hearing what happened to her mother. It has been elicited that the daughter also knew the

appellant quite well and there is unchallenged evidence that the daughter had given gifts to the wife and children of the appellant for Christmas.

The contradictions marked as V1 to V3, V1 in page 115 of the brief relates to the identification of the appellant by name. The incident has happened during day time by a person well known to the victim who had been talking with her few minutes before the incident. Her being unaware of his name when she could identify the person without any doubt is not a material contradiction in this case. As stated earlier, on perusal of the evidence of the victim it is quite apparent that it was to the appellant *baas* the prosecution witnesses were referring to without any ambiguity.

V2 is with regard to the victim denying she asked for water from the appellant and V3 is her stating in evidence that the appellant did not give her a bottle of water when in the statement to the police it is recorded that he gave her a bottle of water. These highlighted contradictions do not affect the credibility of the witness and are not material contradictions that go to the root of the case.

The defence has failed to assail the credibility of PW 1 in cross examination. The learned trial judge has correctly considered that these contradictions do not affect the credit worthiness of PW 1. Therefore, the ground of appeal that the learned judge had erred not considering the contradictions and the omission cannot stand.

Another ground of appeal is the learned trial judge rejecting and not applying the principles governing the evaluation of the Dock Statement.

In the Dock Statement the appellant admits shouting in front of the house of the victim that he was unable to earn a living that day because of PW 2 who is

alleged to have asked the appellant to assist him to take some items to the Railway Station that day but when the appellant came, PW 2 had already left. This is the defence he has put forward. Therefore, it is the position of the appellant that a false complaint had been lodged accusing him of raping PW 1, because he was shouting in front of the victim's house.

In page 192 of the brief it refers to an alleged argument between the appellant and the victim over the appellant finding fault with PW 2 wasting his day and his losing his source of income as he is a daily wage earner.

It is up to the prosecution to prove the case beyond reasonable doubt. However, in the instant case the probability factor of the dock statement of the appellant has to be given some serious consideration.

It is in evidence that the victim's family left *Kandy* because of the shameful incident. The victim is a 67 year old lady with a young working daughter and a son who was abroad and the husband living with her. Would a woman who had suffered a stroke make a false complaint claiming she was raped by a man who lives in close proximity to her house over the fact he shouted that he could not find work that day due to PW 2 not keeping his word to give employment that day? Would an elderly couple be of a mind set to accuse a comparatively young person who had been employed by them on a few occasions and who live close by of such an offence in our society if it were not true, knowing and realizing the trauma, the humiliation and the embarrassment they will have to go through in society. What was the victim going to gain by making such a false complaint other than shame? I am of the view that it is not at all probable in the given context.

The learned trial judge has very carefully analysed and considered the Dock Statement in page 446 of the brief (page 17 of the judgment) and has quite correctly concluded that the dock statement did not raise a reasonable doubt on the prosecution case.

For the reasons adumbrated in the foregoing paragraphs of this judgment, I find no merit in any one of the grounds of appeal. Therefore, there is no valid reason to interfere with the judgment of the learned High Court Judge of *Kandy*. Accordingly, the conviction and the sentence are affirmed and the appeal is dismissed.

**JUDGE OF THE COURT OF APPEAL**

**P.Kumararatnam,J**

I Agree

**JUDGE OF THE COURT OF APPEAL**