

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

In the matter of an Appeal under section 331
(1) of the Code of Criminal Procedure Act No
15 of 1979.

Democratic Socialist Republic of Sri Lanka

Complainant

Court of Appeal Case No:

CA-HCC-257/2020

HC of Balapitiya Case No:

1701/2014

Vs

Pitigala Arachchige Yasantha alias 'Manju'

Accused

AND NOW BETWEEN

Pitigala Arachchige Yasantha alias 'Manju'

Accused-Appellant

Vs.

Hon. Attorney-General,
Attorney Generals Department,
Colombo 12

Complainant-Respondent

Before: Menaka Wijesundera, J.
B. Sasi Mahendran, J.

Counsel: Asela Serasinhe for the Accused-Appellant
Chathurangi Mahawaduge, SC for the Respondent

Written 31.03.2022 (by the Accused-Appellant)

Submissions: 24.07.2023 (by the Respondent)

On

Argued On: 25.07.2023

Decided On: 11.10.2023

Sasi Mahendran, J.

The Accused-Appellant (hereinafter referred to as 'the Accused') was convicted of raping a woman named Hewassagamage Shakila Priyadharshani (PW1) and was sentenced to a term of 12 years rigorous imprisonment with compensation of Rs.250,000/- carrying a default sentence of 2 years simple imprisonment and a fine of Rs.20,000/- and a default sentence of 9 months simple imprisonment.

Being aggrieved by the said conviction the Accused has appealed to this court.

The following are the grounds of appeal set out in the written submission.

1. The evidence of the prosecutrix is unworthy of credit
2. The Learned High Court Judge has failed to consider the legal principles relating to 'corroboration' as it would be relevant to allegations of 'rape'
3. A fair and comprehensive investigation has not been conducted by the Police, which has led to a grave prejudice being caused to the Appellant
4. The evidence given by the Appellant, his wife and sister have not been properly assessed and analysed by the Learned Trial Judge.
5. The learned Trial judge has failed to apply the proper principles relating to 'burden of proof' in convicting the Appellant.

6. Without prejudice to the above grounds of appeal, it is argued that the custodial sentence imposed on the Appellant is excessive and deserves to be reduced considering the facts and circumstances pertaining to this case.

The facts of this case are summarised as follows:

According to PW1, Shakila Priyadarashani (the victim and a distant relative of the Accused) testified that on the 12th of August 2009, around 2:00 pm when she was going to the well to have bath which was near to her house her brother, Nishanka, noticed that the door to the rear entrance of her house was open, a door she recalled locking before she left. When she returned home and was getting dressed in her room, she heard a noise near her bedroom door. Turning to identify the source, she saw the Accused and promptly screamed, asking, “මොකද මං ජූ අයිියා කාමරේ ඇතුළේ”, "Then, the Accused covered her mouth with his hand, leaving her face red—a detail she noted when later speaking to the police. He pushed her onto the bed, positioned himself on top of her, began to remove his trousers, and forcibly assaulted her. Throughout this ordeal, her hands were restrained together. She experienced pain during the assault. Afterward, when the Accused tried to leave, PW1 grabbed his t-shirt, and the Accused pushed PW1 away. Afterwards when she checked her skirt (evidence marked as P1) she saw blood on it, and noticed her bed sheet was stained with blood as well (evidence marked as P2). She indicated that she was abused for half an hour, she affirms that there were houses in the vicinity but that she could not seek help.

She added that she had not left her house until her mother arrived. After her mother (PW2) returned, she complained to her. Her mother then went over to the ground where the Accused was playing and spoke to him. At 7:00 pm, PW1, along with PW2 and PW2's elder sibling, went to the police to lodge a complaint. Since there was no female officer present, she was sent to the hospital for an examination. She was examined by a doctor the following day because the hospital had been closed the night before. Moreover, she denies having met the Accused or visiting his house.

As stated in her cross-examination, about two weeks before this heinous incident, she had learned about the Accused because PW2 had informed her of their relationship and the fact that he was PW1's uncle. They had first met at the market. When the defense suggested an affair between PW1 and the Accused, she denied such an implication. When questioned by the defense about why her screams weren't heard by neighboring houses in

close proximity, she explained that the sound did not travel because all the windows and doors were closed.

It should be noted that this point was raised when PW5 gave evidence; he affirmed that there were no people around in that vicinity at that time.

She had tried to struggle but she was restrained by the Accused, and she was abused for half an hour. After she told PW2 who later questioned the Accused, he admitted to troubling PW1. Thereafter, he brought his wife (DW1) and said that he accepted his guilt at the time, but nothing of that sort transpired, and he tried to attack both PW1 and PW2. The defense put forward the demeaning question, suggesting that it was PW1's mother's plan to implicate the Accused to get him to marry the prosecutrix. PW1 completely denied these implications.

On page 84 of the brief:

ප්‍ර : තමන්ගේ අම්මටා අවශ්‍ය වෙලා තිබුනා මොනායම් හරි හේතුවක් පාදක කරගෙන මේ විත්තිකරු හා තමන් අතර යම් සම්බන්ධයක් ඇතිකරලා තමන්ලා දෙන්නා එක වහලක් යටට ගෙන්න. අන්න ඒ නිසයි මේ වගේ අසත්‍ය චෝදනාවක් කරන්නේ කියලා මම යෝජනා කරනවා?

උ : අමුලික බොරුවක් ස්වාමීනි. අපේ අම්මා ඒ වගේ පහත් ගැනියෙක් නෙවෙයි. අපි අහිංසක මිනිස්සු.

ප්‍ර : අම්මගේ ඒ අවශ්‍යතාවය ඉටුකරන්න තමයි තමන් මේ වගේ අසත්‍ය ප්‍රකාශයක් කරන්නේ කියලා මම යෝජනා කරනවා?

උ : ගරු ස්වාමීනි, කිසිදු කාන්තාවක් තමන්ගේ ජීවිතයේ වැදගත් දෙයක් ගැන මේ වගේ බොරුවක් කියන්නේ නැහැ. මම දැන් මේ සිද්ධිය නිසා අවුරුදු 07ක් තිස්සේ දුක් විඳිනවා. විත්තිකරුගේ බිරිඳ පාරේ යන්න දෙන්නේ නැහැ, අපහාස කරනවා. ඇයි මම ඒ වගේ බොරුවක් කරන්නේ. මේ පෙරකදෝරු මහත්තයා මේ විත්තිකරුව බේරන්න තමයි බොරු කියන්නේ.

Although we did not have the benefit of observing the demeanour and deportment of the witness, the Learned Trial Judge, who did, was impressed by the testimonial trustworthiness of this witness and accepted her evidence as credible and truthful. We hold that she was consistent with her story given at the trial court; therefore, we are satisfied that she is telling the truth. The primary objection raised against the victim was the lack of corroboration in her testimony. Our courts have considered this aspect and concluded that corroborative evidence is not necessary if the victim's testimony is of such a character that it convinces the court of its truthfulness.

In Bhoginbhai Hirjibhai V. State of Gujarat (1983) AIR S.C 753 Indian Supreme Court stated thus: -

“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 injury.”

However in **Gurcharan Singh V. State of Haryana AIR 1972 S.C 2661 the Indian Supreme Court** held: -

“As a rule of prudence, however, court normally looks for some corroboration on her testimony so as to satisfy its conscience that she is telling the truth and that the person accused of rape on her has not been falsely implicated.”

In **Premasiri V. The Queen 77 N.L.R 86 Court of Criminal Appeal** held: -

“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 **Sunil and another V. The Attorney General 1986 1 SLR 230, His Lordship Dheeraratne, J** held that: -

“I think it is perfectly legitimate for a judge, in a case of this nature, to direct a jury that if they find the evidence of the complainant so convincing, they could act on that evidence alone, even in the absence of her evidence being corroborated. I find that this proposition has been succinctly expressed by Salmon, L. J. in the case of *Rex v. Manning*⁽³⁾:

"What the judge has to do is to use clear and simple language that will without any doubt convey to the jury that in cases of alleged sexual offences it is really dangerous to convict on the evidence of the woman or girl alone. This is dangerous because human experience has shown that in these courts girls and women do sometimes tell an entirely false story which is very easy to fabricate, but extremely difficult to refute. Such stories are fabricated for all sorts of reasons, which I need not now innumerate, and sometimes for no reason at all. The judge should then go on to tell the jury that, bearing that warning well in mind they have to look at the particular facts of the particular case and if, having given full weight to the warning, they come to the conclusion that in the particular case the woman or girl without any real doubt is speaking the truth, then the fact that there is no corroboration matters not at all; they are entitled to convict." (This case was relied by **Justice Sisira De Abrew in K.W.N.K Jayalath v The Republic of Sri Lanka, [2010] C.A 128/206 decided on 06.10.2009 (2010 B.L.R 153).**)

The above dictums were heavily relied upon by **His Lordship H.N. J. Perera, J** in the case of **Thambarasa Sabaratnam v. A.G, CA 127/2012, decided on 03.08.2015, held:**

“Therefore, it is very clear that an accused person facing a charge of sexual offence can be convicted on the uncorroborated evidence of the victim when her evidence is of such character as to convince the court that she is speaking the truth. Although the accused-appellant took up a plea of alibi in his evidence, it was never put to the prosecutrix in cross-examination.”

We hold that, since the court accepts the prosecutrix's evidence as truthful, we find there is no impediment for this court to act solely on the evidence of the prosecutrix.

According to PW2 Amarawathie (PW1's mother and relative to the Accused), on the fateful day after returning home from work at 6:00 pm, PW1 had complained to PW2 about what the Accused did to her, PW2 had inspected the white skirt that PW1 was wearing at the time and discovered that it was stained with blood. afterwards, PW2 questioned the Accused who was playing cricket on the adjacent ground, The Accused went on to admit the allegation made by PW2 and stated that he did not expect the incident to be this severe.

On page 91 of the brief;

උ: අපේ ගේ ලගම ඉස්කෝලේ පිට්ටනිය තියෙන්නේ. ඒ මිනිහා නිතරම පිට්ටනියට සෙල්ලම් කරන්න එනවා. ඒ වෙලාවෙන් සෙල්ලම් කර කර හිටියා. මම ලිද ලහට ගිහින් කතා කරලා ඇහුවා මේ ගැන. එතකොට ඔව් මගෙන් එහෙම දෙයක් වුනා මම එව්වරටම හිතුවේ නැහැ එහෙම දෙයක් වෙයි කියලා කිව්වා.

The Accused, along with his wife (DW1) and his sister (DW2), arrived at PW1's house and discussed the incident. During that time, the Accused stated he accepted the accusation because he was afraid. Thereafter, PW2, PW1, PW2's son, and her sibling proceeded to the police station to lodge a complaint. PW2 rode in a three-wheeler to find the Accused, while PW1 and PW2's sibling went to the hospital. She added that they were distantly related to the Accused through PW2's father and did not have a close relationship with him.

In her cross-examination, she stated that there was a distant relationship with the Accused and that PW1 did not know the Accused very well. PW2 denied the suggestions of an affair between the Accused and PW1. After PW1 reported the incident to PW2, she examined her daughter's clothes. The defense raised two queries: first, whether this was a scheme between her and her daughter to have her daughter marry the Accused, and

second, whether they went to the police because the Accused had instructed them to. PW2 denied these suggestions. Taking into consideration the aforementioned witness testimony, we believe that the Prosecutrix informed her mother truthfully about the incident without any exaggeration. We find PW2's evidence to be consistent.

When we examine the evidence of the aforementioned witnesses, we observe that the Learned Trial Judge properly evaluated the evidence presented to him. He equipped himself to adjudicate based on the facts, through the observation of the demeanour and deportment of the witnesses. We find no reason to challenge the evidence presented to us by these witnesses, as it is not 'perverse' and does not create any form of doubt. We identify no inconsistencies in the corroborated evidence between the two witnesses, which indicates that these witnesses remained consistent throughout. This consistency denotes their trustworthiness and reliability

PW5, CI Don Padumalal Wijayawickrema, testified that on the day in question, at 7:45 pm, the preliminary complaint was lodged at the police station by PW1 and PW2. Since the lady officer was not present at the time, he sent PW1 along with her aunt to the hospital for examination. Later, at 7:55 pm, PW5 led a team of officers from the police station with the intent to arrest the Accused. However, the Accused was not at home. PW5 informed the neighbours to ask the Accused to report to the police station. The next day, at 10:35 am, the lady officer, WPC 1078 Gayani (PW7), recorded a statement from PW1. PW5 inspected the house. During his inspection of the room where the incident occurred, he found a grey bedsheet stained with blood. He took it into custody, returned to the police station, entered it as No.79/2005, and handed it over to the reserve officer. He further noted that there were houses in close proximity

In his cross-examination, he stated that he went to the prosecutrix's residence at 7:55 p.m. on the day of the incident. However, it was closed, so they returned the following day. The inspection was conducted at 12:40 p.m., and the details were entered at 1:00 p.m. He further confirmed that wooden items were placed in the corner of the room. During his visit to the prosecutrix's house for the inspection, both PW1 and PW2 were present.

PW6, P.S 31725 Athula Jayakodi, corroborated PW5's testimony regarding the date and time the complaint was lodged. He also mentioned that he did not record the statement because the lady officer was not available at that moment.

On page 122 of the brief;

ප්‍ර: මෙම ස්ත්‍රී දූෂණය සම්බන්ධයෙන් පැමිණිල්ල සටහන් කලාද?

උ : උතුමාණෙනි එම අවස්ථාවේ දී මෙම කාන්තාවන් දෙදෙනා ගෙන් ස්ත්‍රී දූෂණයක් සම්බන්ධයෙන් මෙම තොරතුර අනාවරණය වුනේ. එම අවස්ථාවේදී තොරතුර සටහන් කිරීමක් සිදු කලේ නැහැ. මම තොරතුර සටහන් කර නැබුවා.

He further stated that the Accused was informed to come to the police station. Subsequently, the Accused visited the police station on 14.08.2009 and was arrested there. In his cross-examination, he mentioned that PW7 had recorded PW1's statement at 12:00 noon on 13.08.2009 while they were at the hospital. He also indicated that the Accused had voluntarily visited the police station on 14.08.2009 at 8:20 a.m. and was then arrested. PW7, WPC 1078 Gayani de Silva, shared that she was asked to record a statement from PW1, who was at the Balapitiya Hospital on 13.08.2009. She left the police station at 8:30 a.m. to do so. She recorded both PW1's and PW2's statements. In her cross-examination, she mentioned that she had recorded PW1's statement on 13.08.2009 at 10:35 a.m. and entered it in the crime book by 12:00 noon. PW3, Dr. Dampali Jagoda, reported that on the 13th of August 2009, she took a brief history of the unfortunate incident that occurred between PW1 and the Accused and then examined PW1 at 9:00 a.m. Afterwards, PW3 discovered three injuries which were located in her female genitalia and towards the low side of the said region, she further claimed that there were serious injuries which appeared to be lacerations. She further stated that these injuries could have been caused four to five days ago. When it was put forward by the prosecution if this could have been caused on the previous day, she affirmed that it is possible.

On page 139 of brief:

ප්‍ර : ඒ අනුව මෙම තුවාලය කොපමණ කාලයක් තුළ සිදු වී ඇති තුවාලයක් බවට නිගමනය කල හැකි?

උ : ආසන්නම දිනයකදී සිදුවූ බවට නිගමනය කල හැකිය ස්වාමිනි.

ප්‍ර : ඔබ තුමිය රෝගියා පරීක්ෂා කලේ 13 වෙනිදා 12 වෙනිදා සිදු වූ ලිංගික ප්‍රවේගයකින් සිදු විය හැකිද?

උ : විය හැකිය ස්වාමිනි.

She further indicated that the laceration observed could be inflicted through a level of force during intercourse.

In her cross-examination, she confirmed that PW1's statement was taken on 13.08.2009 at 9:00 am, during which a brief history of her being subjected to abuse was recorded. She further stated that an examination can be conducted without issues even

after 48 hours from the incident. In her expert opinion, she noted that lacerations are not commonly observed during consensual intercourse. However, they are more likely to occur when force is involved.

The evidence presented by PW3 directs our attention to the brief history provided by the prosecutrix, the injuries observed in her female genitalia, and the conclusions drawn based on her expert opinion. Taking into account the brief history provided by PW1 to PW3, which highlighted that she was subjected to sexual abuse through intercrural sex by the Accused forcibly, we find that this account remains consistent with all the evidence we have reviewed above. Given the testimonies of PW2, PW5, PW6, and PW7, as well as the medical report by PW3, we see no reason to doubt PW1's account of her experience

A similar situation arose in the case of **D. Tikiribanda v A.G [2010] B.L.R, CA case no. 64/2003 decided on 06.10.2009, His Lordship W.L Ranjith Silva** held that;

“The history given in the medical report is also consistent with the version of the victim. Although this may not be corroboration in the strict sense it could be taken as evidence consistent and thus form to some extent, corroboration and is admissible under section 157 of the Evidence Ordinance. In addition to what I have already stated, in the light of consistency in the evidence of the victim, of her mother and the medical report which lend credence to the version of the victim, the discrepancy, if there is any, in the evidence of the two witnesses on this point, could be easily ignored.”

Based on PW3's expert opinion, the observed injuries and their pattern align with the brief account provided by PW1. It was evident that the Accused exerted significant force during penetration. After considering all these aspects, I am of the opinion that this witness's testimony is reliable and can be accepted.

The Accused version

The Accused gave evidence under oath that on 12.08.2009, at about 4:30 p.m., he encountered PW1, who rushed towards him, asking why he wasn't speaking to her. She then held both his hands. In response, the Accused slapped her hands away and departed.

Later, around 5:30 p.m., PW2 approached him on the playground, querying if he had harassed her daughter. He replied that he hadn't. After returning home, he informed his wife (DW1) about PW2's allegation. The Accused, DW1, and DW2 then went to PW2's residence to discuss the accusation. Upon their arrival at PW2's home, DW1 told PW2 that her husband hadn't harmed the prosecutrix and suggested that if they believed the allegations, they should report it to the police. In his evidence, the Accused neither mentioned a secret affair with PW1 nor challenged the false accusation while at PW2's residence.

In his cross-examination, when PW2 questioned the Accused about the incident, he believed it referred to him pushing her away during their conversation. He further confirmed that no specific allegations were hinted at him. Additionally, he mentioned that when he visited PW2's house later that day, he did not inquire about the accusation. He later avoided approaching the police due to fear but claims to have voluntarily reported to the police station later. Upon reviewing the evidence provided by the Accused, it is apparent that he has contradicted what he stated earlier during his examination-in-chief. This clearly indicates a lack of consistency in his evidence, making it unreliable. When examining the Accused's account, his reason for evading the police and not immediately reporting to the station is implausible. If he genuinely did not commit such a grievous act, then why did he refrain from approaching the police? Furthermore, during his cross-examination, he indicated understanding PW2's inquiry as relating to him pushing PW1, resulting in her fall. If he truly believes in his innocence, his absence from the police station on 12.08.2009 seems improbable. Moreover, the Accused did not mention the alleged secret affair with the prosecutrix when he was at PW2's residence. This detail wasn't revealed to PW2 until the trial. We find no logical reason why this prosecution witness would concoct such a lie to implicate the Accused. When contrasting the evidence provided by PW2 with that of the Accused regarding what PW2 had questioned him about, PW2's evidence appears consistent, whereas the Accused's does not

DW1, Dulika Priyadharashani Mendis (wife of the Accused and relative of the victim), testified that the prosecutrix and her family had a very close relationship with her own family. DW1 mentioned that if the prosecutrix claimed she never interacted with the appellant, it was a blatant falsehood. This was because the prosecutrix frequently visited their home, assisting the appellant with household chores and childcare. On the day in question, the Accused informed her of PW2's claim that he had harmed the prosecutrix. When she inquired about the truth of this allegation, her husband denied it.

Subsequently, along with DW2, they visited PW2's home to discuss the accusation. The Accused denied the claim and recommended that they lodge a police complaint instead of making unfounded allegations. DW1 conceded that she was unaware of any romantic relationship between the Accused and the prosecutrix at the time of the incident, learning about it only later on.

I am mindful of the observation made by **Justice Sisira De Abrew J** in **Savinda v Republic of Sri Lanka [2010], 1 S.L.R 32 at page 37, His Lordship** held that;

“Learned SSC pointed out that he was arrested whilst hiding on the ceiling of the appellant's house. She tried to contend that he went into hiding because of the guilty mind. But when considering this contention one must one forget the fact that his wife was present at the time of the arrest. No man will admit in the presence of his wife that he committed sexual intercourse on a woman with or without consent.”

For the reasons outlined above, we believe that there is no merit in any of the grounds of appeal presented by the Counsel for the Accused. Consequently, we, of this court, find no justification to interfere with the findings, conclusions, or judgment of the learned High Court judge dated 10.09.2020. We therefore dismiss this appeal.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera, J.

I AGREE

JUDGE OF THE COURT OF APPEAL