

**C.A 112/2011**

T.Muththusamy,

Vs.

The Attorney General,

**High Court Galle Case**

**No: 2942/07**

Before : Sisira. J. de Abrew J. &  
P.W.D.C. Jayathilaka, J.

Counsel : Suranga Bandara for the  
Accused- Appellant.

Chethiya Gunasekera SSC for the  
Attorney-General.

Argued & decided on : 29.05.2013.

**Sisira. J. de Abrew J.**

The Accused-Appellant produced by the Prison Authorities is present in court.

Heard both counsel in support of their respective cases. The accused-appellant in this case was convicted for raping a woman named Karunawathie and for the robbery of gold chain from the possession of said Karunawathie which is an offence punishable under section 380 of the Penal Code. The learned trial Judge sentenced the accused-appellant, on the charge of rape, to a term of 12 years rigorous imprisonment, to pay a fine of Rs. 7500/- carrying a default sentence of 12 months simple imprisonment and to pay sum of Rs. 100,000/- to the victim as compensation carrying a default sentence of 24 months simple imprisonment. On the second count ( the charge of robbery ) he was sentenced to a term of 18 months rigorous imprisonment and to pay a fine of Rs.5000/- carrying a default sentence of 6 months simple imprisonment. Being aggrieved by the said convictions and the sentences the accused-appellant has appealed to this court. Facts of this case may be briefly summarized as follows:-

On 31.05.2004 around 7.30 p.m. Karunawathie after getting down from a bus was walking to her daughter's place. On the way a person without clothes appeared in front of her, drag her to nearby jungle and committed sexual intercourse on her. This person snatched her gold chain too. According to Karunawathie this was done without her consent. After the sexual act, she without going to her daughter's place, ran back to the junction where there was a boutique. She immediately complained to the inmates of the boutique and on the instructions of the boutique owner one Padmasiri who was working in the boutique went with her to the daughter's house. She complained the incident to the mother-in-law of the daughter and after taking a wash she with her son-in-law, mother-in-law of the daughter and Padmasiri set off for the police station. On the way Padmasiri and the others knocked on the door of a house which was close to the place of incident in order to find out whether anybody was in the vicinity. When a person from this house opened the door she immediately identified the person as the person who committed the act of sexual

intercourse and snatched her gold chain. The fact that she identified this person ( the accused-appellant ) as the person who committed the act of rape and snatched the gold chain was corroborated by the evidence of Padmasiri and Somawathie who is the mother -in-law of the daughter of the victim. It is therefore seen that at the very first opportunity she identified the accused-appellant as the person who committed this crime. According to her evidence, she, on previous occasions, had seen this person when she came to her daughter's place but she was unaware of the name of the accused-appellant. Learned counsel for the accused -appellant contended that the identity of the accused-appellant has not been established beyond reasonable doubt by the prosecution. I now advert to this contention. It is in evidence that Karunawathie identified the accused-appellant at the very first opportunity as the person who snatched the gold chain and committed sexual intercourse. When she came back to the accused house with the police officers she again identified the accused-appellant. She, on previous occasions had seen

the accused –appellant. When I consider all these matters, I am of the opinion the identity of the accused-appellant has been established beyond reasonable doubt. I therefore reject the submission of the learned counsel for the accused-appellant.

Learned counsel next contended that the evidence of the accused appellant has not been properly evaluated by the learned trial Judge. The accused appellant who gave evidence under oath admitted that, on 31.05.2004, Karunawathie, and the others came to his house. According to the evidence of the accused-appellant, when Karunawathie and others came to his house, Karunawathie pointing out the accused-appellant had said that the person who committed the crime was a person like him. But Karunawathie denying this position stated that she pointed out the accused – appellant as the person who raped her. Somawathie and Padmasiri corroborate the evidence of Karunawathie on this point. The learned trial Judge after considering the evidence led by both sides, came to the

conclusion that the accused-appellant's evidence on this matter cannot be accepted. The learned trial Judge has rejected the evidence of the accused-appellant. I have gone through the evidence led at the trial. I see no reason to find fault with the conclusion reached by the learned trial Judge in rejecting the accused-appellant's evidence. For the above reasons, I am unable to agree with the submissions of the learned counsel for the accused-appellant.

To prove a charge of rape the prosecution must prove the following matters beyond reasonable doubt.

(1) Sexual intercourse was committed on the woman.

(2) It was committed without her consent or against her will.

(3) It was committed by the accused-appellant.

The doctor, who examined the victim four days after the incident, has found a laceration in the victim's vagina. According to the doctor the wound was red in colour. He expressed the opinion that there was recent vaginal penetration. Karunawathie has said that the accused –

appellant committed the act of sexual intercourse on her. She has, soon after the incident, identified the accused – appellant. Karunawathie in her evidence has said that sexual intercourse was committed against her will and without her consent. When I consider all these matters I hold the view that the prosecution has proved all three ingredients set-out above beyond reasonable doubt.

I therefore see no reason to interfere with the learned trial Judge's judgment. For the above reasons, I affirm the convictions and the sentences and dismiss the appeal. I direct the prison authorities to implement the sentence from the date of this judgment .

*Appeal dismissed.*

**JUDGE OF THE COURT OF APPEAL**

**P.W.D.C Jayathilaka.**

I agree.

**JUDGE OF THE COURT OF APPEAL**

Vkg/-