

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

Premaratnage Nissanka Dissanayke,

Accused-Appellant

C.A 190/2009

Vs.

H.C. Anuradhapura

Case No:134/2003

The Attorney General

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

Counsel : Dr. Ranjit Fernando for the Accused-
Appellant.
Chethiya Gunasekera SSC. for the A.G.

Argued &
Decided on : 17.06.2013.

Sisira J. de Abrew,J.

Heard both Counsel in support of their respective cases. After arguing the case, learned counsel appearing for the Accused-Appellant moves to withdraw the appeal on the conviction on count No: 1. He is also agreeable to bring the conviction under Section 380 of the Penal Code in respect of count No: 2 . Subject to the above conditions learned Counsel moves to withdraw the appeal against the conviction on count No: 2.

Learned Senior State Counsel submits that since the firearm has not been certified as a gun by the Government Analyst, the Court can convict the accused-appellant on a charge of robbery (Under Section 380 of the Penal Code) Dr. Ranjit Fernando agrees with the suggestion made by the learned Senior State Counsel.

The accused-appellant in this case, was convicted for the offence of attempted murder on a woman named Kiridena Mudiyanseelage Kusum Kumari. He was sentenced to a term of 10 years Rigorous Imprisonment and to pay a fine of Rupees 20,000/- carrying a default sentence of 2 1/2 years imprisonment. He was

also charged for being in possession of a firearm at the time he committed robbery of some gold jewellery from the possession of said Kusum Kumari which is an offence under Section 44 (w) of the Firearms Ordinance as amended by Act No: 22 of 1996 read with Section 380 of the Penal Code.

Facts of this case may be briefly summarized as follows:

On the day of the incident, Kusum Kumari was returning home after having a bath from a nearby lake. She was returning on her bicycle. The time was around 5.30 to 6.00p.m. When she was returning she heard a threatening voice of someone. When she looked back, she saw a person armed with a gun. She later, at the Police station, identified this person as the person who robbed her jewellery and shot at her. She then heard a report of a gun. Thereafter she without stopping the bicycle continued to go in the same direction. As she was speeding she fell off the bicycle and thereafter started running. When she was running she heard another report of a gun. She then felt that she had sustained injuries. The accused-appellant dragged her to a thicket and raped her. Thereafter he robbed the jewellery that she was wearing from

her possession. She says that she did not divulge the incident of rape in her Police Statement as it will be heard by her husband who is a Police Officer. It appears from her evidence that she wanted to safe guard her marriage. It is worthwhile to state here that the accused appellant too is a police officer who has left the police service without obtaining prior permission. After the shooting, she was admitted to the hospital. The Doctor who examined her stated in his evidence that she had received one entry wound and one exit wound. Around 12.00 noon of the same day the accused-appellant went to the house of his brother-in-law and asked for some money. At this time, the accused-appellant was carrying a bag in which T56 rifle was found. His brother-in-law Karunaratne Perera states that he saw a T56 gun in the bag of the accused-appellant. This bag was later found by the Police Officer at the scene of offence. Karunaratne Perera identified the said bag. Investigating Police Officers, two days after the incident, recovered a T56 gun from the house of the accused-appellant. The Investigating Police Officers have arrested the accused appellant 5 ½ months after the incident. After the arrest of the accused-appellant, Police Officers have recovered a certain pawn receipts

from the Almira of the accused-appellant. Thereafter the pawn receipts were taken to the relevant pawning center and the owner of the pawning center, Mr. Vishvalingam identified the pawn receipts and the jewellery pawned by the accused-appellant. Jewellery was handed over to the Police. The accused-appellant at the time of pawning has given his name as Sarath Gunawardene. Vishvalingam says that he knows the accused-appellant since he was a police officer. The Police officer recovered a chain and a pendent, bracelet and three rings from the pawning center. Kusum Kumari identified two rings, chain and a pendent which were taken into custody by the Police from the pawning center. Kusum Kumari later had seen the accused appellant at the Police station. Although there was no Identification Parade held, we are of the opinion, that the identity of the accused-appellant has been established beyond reasonable doubt, when we consider the evidence relating to the pawn receipts and the identification of the jewellery by Kusum Kumari. The accused denied the charge in his dock statement but he did not deny the recovery of the pawn receipts and the gun from his house. When we consider the evidence led at the trial, we are of the opinion that the learned trial

judge has correctly convicted the accused –appellant on the charge of attempted murder. Both counsel are agreeable to alter the conviction under Section 380 of the Penal Code in respect of count No: 2. After considering the evidence, we are of the opinion that the charge of robbery has been established beyond reasonable doubt. After considering all these matters, we convict the accused appellant on the charge of robbery which is an offence under Section 380 of the Penal Code in respect of count No: 2. On this basis, we set aside the conviction of the offence that the accused-appellant was in possession of a firearm (in respect of count No 2). We therefore set aside the life imprisonment imposed on Count No 2. On Count 2, we have now convicted the accused-appellant on the charge of robbery which is an offence under Section 380 of the Penal Code. On this Count, we sentence him to a term of 10 years Rigorous imprisonment. Both terms of imprisonment should run consecutively. Both counsel admit that the accused-appellant after conviction has not been released on bail. We direct the Prison Authorities to implement the sentence from the date of conviction

(16.11.2009). The total term of imprisonment that he has to undergo is 20 years R.I in addition to the default sentence. We affirm the conviction and the sentence on Count No:1.

Subject to the variation of the conviction and the sentence as stated above, appeal of the appellant is dismissed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

P.W.D.C. Jayathilaka,J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/-