

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

Premasirige Indika Roshan
Premajayantha,

Accused-Appellant

C.A. No. 211/2012

H.C. Anuradhapura 58/2010

Vs.

Hon. Attorney General

Respondent

Before : **Sisira J. de Abrew, J. (Acting P/CA) &
P.W..D.C. Jayathilaka,J.**

Counsel : Anil Silva P.C. with Dinushika Medagoda for the
Accused-Appellant.
Ayesha Jinasena D.S.G. for the A.G.

Argued on : 20.01.2014 and 21.01.2014

Decided on : 21.01.2014

Sisira J. de Abrew,J (Acting P/CA).

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 Sriyani Hemalatha and was sentenced to a term of ten years rigorous imprisonment, to pay a fine Rs.25,000/- carrying a default sentence of three months simple imprisonment and to pay a sum of Rs.100,000/- as compensation to the victim carrying a default sentence of one year simple imprisonment. Being aggrieved by the said conviction and the sentence he has appealed to this court. Facts of this case may be briefly summarized as follows:-

The Accused-Appellant and the prosecutrix were living in one neighbourhood. On the day of the incident the parents of the prosecutrix had gone to a funeral house in a neighbouring village. When the prosecutrix (Hemalatha) was caging hens in the rear side of her house, the Accused-Appellant came to this place. He closing the mouth of the prosecutrix with one hand and putting the other hand around her waist, in a loving manner, took her to the front room of the house. The Accused-Appellant thereafter, put her on the bed in the room and raped her. The prosecutrix says that she tried to push the Accused-Appellant but failed. She had also told the Accused-Appellant that there was no one at home. The Accused-Appellant then said that he would go without wasting much time. After the incident she washed herself and washed her cloths. She says that there were reddish liquid and some liquid in solid form ("possibly sperms") on her cloth. She

washed the cloths. Thereafter she went and told one Ramyalatha what happened to her. Thereafter she went and told the Sister-in-law of the Accused -Appellant who advised her not to tell the mother , as mother was very rough and tough. However, she did not tell the mother on the same day. According to her, she told the mother six days after the incident. Before she told the mother she had told the incident to Ramyalatha, Sister-in-law of the Accused-Appellant, mother of the accused and her aunt (Father's brother's wife). Thereafter she too went to the funeral house which was in the neighbouring village. After she told the incident to the mother, she went and lodged a complaint in the police station. The Accused-Appellant gave evidence under oath. He took up the position that he committed sexual intercourse on Hemalatha with her consent. He further said that even on the previous day he had sexual intercourse with Hemalatha with her consent. This incident took place on the 14.05.2005. According to the evidence of the Accused-Appellant on 12.05.2005, he invited Hemalatha to his house. At this stage she replied in the following manner:- "Father is at home. Today I cant" At this stage she invited him to come to her house on the following day. The accused says that she complied with her request. Since the Accused-Appellant has taken up the position that sexual intercourse was committed with the consent of Hemalatha, it is necessary to consider, the law relating to the offence of rape. Hemalatha was around 20 years of age

at the time of this incident. In a charge of rape the prosecution must, beyond reasonable doubt, prove the following ingredients.

1. Sexual intercourse was committed on the woman.
2. The said sexual intercourse was committed by the accused.
3. The said sexual intercourse was committed on the woman without her consent or against her will.

If the prosecutrix was under 16 years of age, it is not necessary for the prosecution to prove the 3rd ingredient. If the woman was under 16 years of age and if the accused has committed sexual intercourse on her with or without her consent the accused would be guilty of the offence of rape. If the court comes to the conclusion that on the evidence of the prosecution itself, sexual intercourse was committed with the consent of the woman who was above 16 years of age, the accused should be acquitted of the charge. If the court finds that there is a reasonable doubt on the evidence of the prosecution itself, with regard to the question that sexual intercourse was committed with the consent of the woman, the accused must be acquitted of the charge. Therefore it is necessary for this court to find out whether there was any consent by the prosecutrix Hemalatha to the sexual intercourse. The accused-appellant in his evidence says that he committed sexual intercourse on Hemalatha with her consent. He doesn't stop at this point. He further says that he committed sexual intercourse on the previous day as well. Learned prosecuting State Counsel could not mark any contradiction or omission

with his statement made to the police. This suggests that the position taken up by the Accused-Appellant in his evidence has been the same position that he took up in his statement made to the police.

The learned trial Judge, in his judgment, has not rejected the evidence of the accused-appellant. He has failed to state whether the evidence of the Accused-Appellant creates any reasonable doubt in the prosecution case. I would, at this stage, for the benefit of the trial Judges and legal practitioners of this country, like to state the following guidelines with regard to the evaluation of the evidence of an accused person.

1. If the evidence of the accused is believed it must be acted upon.
2. If the evidence of the accused creates a reasonable doubt in the prosecution case the accused must be acquitted.

The learned trial Judge, in his judgment, has observed that the accused in his evidence has not challenged the evidence of the prosecutrix. This is factually incorrect. The Accused-Appellant in his evidence has challenged the evidence of the prosecutrix. He has stated, in his evidence, that he committed sexual intercourse on Hamalatha with her consent. Thus, in my view, the accused-appellant has challenged the evidence of the prosecutrix. The learned trial judge after making the said

observation has stated in his judgment that the credibility of the prosecutrix has not been impeached. In my view, when the accused-appellant challenged the evidence of the prosecutrix, Court must consider whether the credibility of the prosecutrix has been impeached or not. The learned Trial Judge has not followed the principle that I stated above. In our view, there is no reason to reject the evidence of the Accused-Appellant. Further the evidence of the Accused-Appellant, in my view, creates a reasonable doubt in the truth of the prosecution case.

✓ Further, we would like to observe the ^{fact} ~~proof~~ that the prosecutrix washed her clothes. If her intention was to make a complaint of rape against the Accused-Appellant, the said evidence would have been the best evidence. But if the Accused-Appellant admits that sexual intercourse was committed on her with her consent, the said evidence would not be important. We do not know as to why the prosecutrix washed her clothes. Further, the prosecutrix brought this matter to the notice of her mother after six days. The reason given by her is, that her mother was very rough and tough. But, before she brought this matter to the notice of her mother, she went and told four women in the village

I have to ask the question as to why she did not bring this matter to the notice of her mother. Is it Because that she had a guilty conscious with regard to the incident? Is it because she consented to the act of sexual intercourse? In this connection, it is pertinent to observe that the

way in which the accused-appellant took her to the front room of the house. The Accused-Appellant closing her mouth with one hand and putting the other hand around her waist in a loving manner, took her to the front room and committed sexual intercourse. When we consider these observations, we feel that there is a reasonable doubt with regard to the question that she had given her consent to the sexual intercourse. We therefore hold that the charge of rape has not been proved beyond reasonable doubt. For the above reasons, we hold that the judgment of learned trial Judge convicting the accused-appellant for the offence of the rape is erroneous and cannot be sustained. For the above reasons, we set aside the conviction and the sentence and acquit the Accused-Appellant.

Appeal allowed.

ACTING PRESIDENT OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL

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