

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

Case No: CA /03/2006

Kalutara - High Court No: 280/2003

Kankanam Thantrige Samantha Pushapa
Kumara

Accused - Appellant

Vs.

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

Plaintiff-Defendant

C.A 03/2006**H.C. Kalutara No: HC 280/2003.**

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

Counsel : Amila Palliyage for the Accused-Appellant.
Sarath Jayamanna D.S.G for the Attorney-
General.

Argued & Decided on: 10.12.2013

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

The accused-appellant is not present in court. Counsel submits that he is on bail. According to the letter of Superintendent of Prisons dated 27.03.2007 the accused-appellant was released on bail on 20.07.2006. Amila Palliyage assigned counsel is for the accused-appellant.

Heard both counsel in support of their respective cases. The accused-appellant in this case was convicted for raping a girl named Nishani Geetha Liyanage who was under 16 years of age and was sentenced to a term of 10 years rigorous imprisonment and to pay a fine of Rs.5000/- carrying a default sentence of 2 years 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:

On the day of the incident around 8.30 in the morning the accused-appellant with whom Nishani Geetha Liyanage had a love affair, came to the room of Geetha Liyanage. Thereafter Geetha Liyanage asked as to why he came. Thereafter the accused-appellant pushed her to the bed and raped her. Geetha Liyanage at one stage stated that the accused removed her panty. Under cross examination she has stated that it was lowered down by the accused-appellant. Learned Counsel for the accused appellant tried to contend that since her panty had not been removed, it was difficult to perform sexual intercourse on her. But we are mindful of the evidence at page 46 and 47 of the brief. At page 46 and 47 she has said that her panty had been removed by the accused appellant. Chandrika Priyanganie who is a cousin sister of Geetha Liyanage walked into the house of the prosecutrix at this time. She saw the accused -appellant running away from the rear door. Geetha Liyanage at this stage told Chandrika that she was raped by the accused-appellant. She noticed blood on her underskirt. The doctor who examined Geetha Liyanage noticed some abrasions on her thigh when she was being admitted to the hospital. According to the Judicial Medical Officer there were old tears on her

hymen. Judicial Medical Officer had examined Geetha Liyanage on 05.09.1998. Incident had taken place on 28.08.1998. The accused - appellant in his dock statement has denied this incident. The evidence of the prosecutrix is well corroborated by the evidence of Chandrika. Further Geetha Liyanage made a prompt complaint to Chandrika to the effect that she was raped by the accused-appellant. When we consider all these matters we are of the opinion that the prosecution has proved its case beyond reasonable doubt. We therefore uphold the conviction and the sentence of the learned Trial Judge and affirm the conviction and the sentence.

Appeal dismissed.

ACTING PRESIDENT OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL.

Vkg/-