

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

Lankapeli Gedara Upaly Senarath
Dharmadasa.

C.A. No:201/2011

**H.C. Kandy Case
No:HC/140/2005**

Accused-Appellant

Vs.

Hon. The Attorney General.

Respondent

BEFORE : SISIRA J. DE ABREW, J. (ACTING P/CA) &
P.W.D.C. JAYATHILAKA, J.

COUNSEL : Bandara Senarath with Kaushalya
Senevirathna for the Accused-Appellant.
Hiranjan Peiris, SSC, for the A.G.

ARGUED ON : 11.02.2014 & 17.02.2014.

DECIDED ON : 17.02.2014.

SISIRA J. DE ABREW, J. (ACTING P/CA)

Accused-appellant is present in Court produced by the Prison Authorities.

Heard both Counsel in support of their respective cases. The accused-appellant in this case was convicted for raping a girl under 16 years of age named Diggage Rankoth Gedera Nirmala Samarasighe and was sentenced to a term of 10 years rigorous imprisonment, to pay a fine of Rs.5,000/-, carrying a default sentence of 6 months simple imprisonment and to pay a sum of Rs.50,000/- as compensation to the victim, carrying a default sentence of one year simple imprisonment. Being aggrieved by the said conviction and the sentence the accused-appellant has appealed to this Court.

According to the facts of this case when the victim girl went to the house of the accused-appellant, the wife of the accused-appellant asked her to cook some rice. Thereafter the wife of the accused-appellant went away from the house saying that she was going to a neighbour's house. Thereafter, the accused-appellant raped her. She says that at the time of the incident the accused-

appellant was armed with a knife. After this incident she has gone on several occasions to the house of the accused-appellant and the accused-appellant on two occasions has raped her. The prosecutrix did not make immediate complaint to her mother. She did not make immediate complaint to anybody. Mother has questioned her in the month of August and thereafter she has revealed the incident to the mother. The doctor who examined the prosecutrix has informed that she was pregnant. She has delivered a child on 24.10.2001. The incident, according to the indictment, was in the month of April, 2001. She says that this was her first sexual intercourse with a man and the child was born as a result of the said sexual intercourse. If this was her first sexual intercourse and the first sexual intercourse took place in the month of April, it is impossible to have a child born on 24.10.2001. She admitted, in her evidence, that the baby was not a premature baby. Therefore on this ground itself the prosecution case should fail.

She said, in her evidence, that sexual intercourse was in the month of March. But later she has said her menses was stopped in the first week in the month of May. Assuming without conceding that sexual intercourse was in the month of March as alleged by her, then the indictment should fail, because according to the indictment the

date of offence was in the month of April, 2001. Thus, if the sexual intercourse was in the month of March accused could not be convicted on the indictment. Here too the prosecution case should fail.

She was examined by a doctor in the month of August, 2001. But surprisingly she has not stated the name of the accused-appellant as the person who committed sexual intercourse on her to the doctor. The question that arises is as to why she did not mention the accused's name to the doctor. I am unable to find an answer to this question. This raises a serious doubt in the prosecution case.

At one stage she claims that sexual intercourse was in the month of March. What was the delay in bringing this matter to the notice of her mother? She says since the accused-appellant was armed with a knife and she was threatened by the accused she did not tell the mother. Then the question arises as to why she went to the accused-appellant's house on several occasions and faced sexual intercourse with the accused-appellant. This also raises a very serious doubt in the prosecution case. Learned trial Judge has failed to consider the above matters. When we consider the above matters,

we hold the view that the prosecution has not proved its case beyond reasonable doubt. We therefore set aside the conviction and the sentence and acquit the accused-appellant. Appeal is allowed.

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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