

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

Arachchi Fernandulage Sarath Fernando

Accused-Appellant

C.A. No:31/2010

Vs.

**H.C. Ratnapura
Case No:56/2006**

Democratic Socialist Republic of Sri Lanka

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

COUNSEL : Chathura Galhena for the
Accused-Appellant.

Chethiya Gunasekera, SSC, for the A.G.

ARGUED AND
DECIDED ON : 19.02.2014.

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

Heard both Counsel in support of their respective cases. The accused-appellant in this case was convicted for raping a woman named Mahagamage Sumanawathie and was sentenced to a term of 15 years rigorous imprisonment and to pay a fine of Rs.10,000/-, carrying a default sentence of 1 year rigorous imprisonment. Being aggrieved by the said conviction and the sentence he has appealed to this Court.

According to the facts of this case the prosecutrix has given a room to one Sarath Abeysiri who is an Ayurvedic doctor. On the date of the alleged incident somebody came to her house and asked for a room. She was in the habit of renting rooms to various people. The prosecutrix refused to give a room. According to her thereafter she saw this man in the kitchen. Thereafter the accused put her on a bed and raped.

The most important question that must be decided in this case is whether the prosecution has proved the identity of the accused-appellant beyond reasonable doubt. When considering this matter the following matters are relevant. Prosecutrix says that she did not know the name of the accused-appellant at the time of the alleged incident. According to her, she did not know the name of the accused-appellant even at the time she made a statement to the police. Following day of the alleged incident when she was going to the Devalaya she met Sarath Abeysiri who was staying in one of her rooms. Even at that time she did not divulge the name of the accused-appellant to said Sarath Abeysiri. It appears from the evidence that when she was examined by the doctor she had divulged the name of the accused-appellant to the doctor. She, in her short history given to the doctor, has stated that the name of the accused-appellant is Sarath. But this name (Sarath) has not been mentioned to Sarath Abeysiri with whom she was going to the police station. When we consider all these

matters we are unable to conclude that the identity of the accused-appellant has been proved beyond reasonable doubt.

Learned Senior State Counsel upholding the best traditions of the Attorney General's Department submits that in view of the contradictory nature of the evidence relating to the identity of the accused-appellant, he is unable to support the conviction. We are pleased with this submission. When we consider all the above matters, we hold the view that the prosecution has not proved the case beyond reasonable doubt. Learned trial Judge has failed to consider the above matters. We set aside the conviction and the sentence and acquit the accused-appellant of the charge. Appeal is allowed.

Appeal allowed.

ACTING PRESIDENT OF THE COURT OF APPEAL

P.W.D.C. JAYATHILAKA

I agree.

JUDGE OF THE COURT OF APPEAL

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