

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

Jatungage Gamini alias Mahathun

C.A. No:139/2011

Accused-Appellant

H.C. Tangalle

Case No:12/2003

Vs.

Hon. The Attorney General

Respondent

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

COUNSEL : Indica Mallawarachchi for the
Accused-Appellant.

Thusith Mudalige, SSC, for the A.G.

ARGUED ON : 12.02.2014 & 19.02.2014

DECIDED ON : 19.02.2014.

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

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Accused-Appellant is present in Court produce by the
Prison Authorities.

Heard both Counsel in support of their respective cases.
The accused-appellant in this case was convicted for raping a woman
named Wijeynayake Kankanamge Nirupa Dharshani and was sentenced

to a term of 12 years rigorous imprisonment, to pay a fine of Rs.25,000/-, carrying a default sentence of 2 years simple imprisonment and to pay a sum of Rs.150,000/- as compensation to the victim, carrying a default sentence of 3 years simple imprisonment. Being aggrieved by the said conviction and the sentence the accused-appellant has appealed to this Court. Before I deal with the facts of this case, I would like to observe that the 3 years default sentence on non-payment of the compensation is illegal.

Facts of this case may be briefly summarised as follows.

On the day of the incident when the prosecutrix was returning from a boutique carrying a bottle of coconut oil the accused-appellant dragged her to a nearby shrub jungle and raped her. The distance between the place where the accused-appellant met the prosecutrix and the place where she was raped was about 25 feet. The rape incident took place, according to the prosecutrix, on a cinnamon land. After the incident she went home, washed her clothes, but did not complain to the mother or any elderly person at home. She says she was threatened with death by the accused-appellant. The incident has come to light nearly three weeks after the incident. Two weeks after the incident when one day the accused-appellant and the prosecutrix were at home, the sister of the prosecutrix noticed that both of them were at home. Sister who felt suspicious about their behaviour questioned the prosecutrix and slapped her. Thereafter the prosecutrix revealed the story to the

sister. According to the prosecutrix the reason for the delay is the death threat made by the accused-appellant. It is interesting to find out whether the said evidence regarding the death threat can be accepted by Court. The prosecutrix after the incident went to the accused-appellant's house. Further, the accused-appellant too came to the prosecutrix's house on several days. The prosecutrix admits that the accused-appellant when came to her house was cracking jokes. When we consider the above evidence it is difficult to believe that the prosecutrix did not complain to the mother or the sister due to the death threat made by the accused-appellant. Thus, her evidence regarding the delay in bringing the matter to the notice of the mother and the sister has to be rejected. The prosecutrix in her evidence says that this was her first and last sexual intercourse. Although, the prosecutrix takes up this position, it appears that the medical evidence does not support this position. Medico Legal Report indicates that there was no hymen in the girl's vagina. Doctor who gave evidence says that the absence of hymen was due to penetration. If this sexual encounter was her first and last sexual intercourse, the natural question that arises is as to how there was no hymen. Doctor says that the absence of hymen has taken place due to penetration. Thus, it is difficult to believe that she has undergone only one sexual encounter. We are unable to believe this evidence. Learned trial Judge without evaluating her evidence has accepted and convicted the accused-appellant. When we consider said matters and the evidence of the prosecutrix we feel that the girl has consented to the sexual intercourse which is alleged to have taken place with the

accused-appellant. We note that when the prosecutrix was giving evidence learned defence Counsel has suggested to the prosecutrix that it was done with the consent. In our view the evidence of the prosecutrix has not corroborated by the medical evidence. In a case of rape the prosecution must prove following ingredients beyond reasonable doubt.

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

The prosecutrix in this case was about 16 years of age. Therefore the prosecution should prove all three ingredients. In a charge of rape it is dangerous to act on the prosecutrix's evidence without corroboration. This view is supported by the judgment of His Lordship Justice Ranjith Dheeraratne in ***Sunil and Another vs. The Attorney General*** (1986 1 SLR page 230) wherein His Lordship held thus –

“It is very dangerous to act on the uncorroborated testimony of a woman victim of a sex offence but if her evidence is convincing such evidence could be acted on even in the absence of corroboration.”

In our view the evidence of the prosecutrix does not inspire any confidence. Charge of rape being the easiest charge that a woman can

make against a man in this world, Courts in evaluating the evidence of a prosecutrix must be careful. In this connection I would like to consider a passage from ***Granville William Proof of Guilt third Edition page 158, 159*** wherein the learned author says thus –

“On a charge of rape and similar offences it is the practice to instruct the jury that it is unsafe to convict on the uncorroborated evidence of the alleged victim. The rule applies to a charge of indecent assault or any sexual offence including an unnatural offence between males. There is a sound reason for it, because these cases are particularly subject to the danger of deliberately false charges, resulting from sexual neurosis, fantasy, jealousy, spite of simply a girl’s refusal to admit that she consented to an act of which she is now ashamed.”

As I pointed out earlier from the evidence of the prosecutrix it appears that the sexual intercourse has taken place with her consent. Thus, I hold that the third ingredient set out above in a charge of rape has not been proved by the prosecution. Learned Senior State Counsel upholding the best traditions of the Attorney General’s Department submits that in view of the evidence of the prosecutrix, he is unable to support the conviction. We are pleased with his submission. When we consider the evidence of the prosecutrix we hold that the prosecution

has not proved the 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

I agree.

JUDGE OF THE COURT OF APPEAL

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