

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

Kurukulasuriya Joseph Perera

ACCUSED-APPELLANT

C.A 77/2011

H.C. Hambanthota 152/2006

Vs.

Hon. Attorney General

Attorney General's Department

Colombo 12.

COMPLAINANT-RESPONDENT

BEFORE: Anil Gooneratne J. &
P. R. Walgama J.

COUNSEL: Saliya Peiris for the Accused-Appellant
Kapila Waidyaratne A.S.G. for the Complainant-Respondent

ARGUED ON: 17.02.2014

DECIDED ON: 23.01.2015

GOONERATNE J.

The Accused-Appellant was indicted in the High Court of Hambanthota for committing an offence of rape (Section 364(1) of the Penal Code) on one Priyadharshi on 18.3.2005 at the Kataragama Y.M.B.A pilgrims rest. Accused-Appellant was convicted on 27.6.2011 and sentenced to 18 years rigorous imprisonment and fined Rs. 5000/- which carries a default sentence of 6 months simple imprisonment. When this appeal was taken up for hearing initially, learned counsel for the Appellant contested the conviction and sentence. The case itself was partly heard and was to be resumed on 16.1.2015. However on the said date learned counsel for the Accused-Appellant indicated to this court that his client had given him specific instructions only to challenge the sentence and not the conviction. He also submitted that the Accused-Appellant has expressed remorse over the incident.

Learned counsel for the Accused-Appellant submitted that his client was about 50 years old, when he was convicted and sentenced and as at today (16.1.2015) he had been incarcerated for a period of over 3 ½ years in prison.

Learned counsel urged that the Accused-Appellant's position be considered sympathetically and invited court to at least consider imposing the minimum statutory sentence of 7 years, imprisonment. Learned Addl. Solicitor General did not really bargain for higher sentence or to have the sentence imposed by the learned High Court Judge be affirmed but drew the attention of court to the fact that the Appellant was bold enough to commit the offence of rape when the victim was in deep slumber along with 18 other women folk in a large room allotted to all the women folk at the YMBA, Kataragama pilgrim's rest. They all came on a pilgrimage with their husbands and other male relatives who occupied the adjoining corridor. Male folks were playing cards at the time of the incident, in very close proximity to the large room occupied by the prosecutrix and other women folk.

The incident took place as observed above at night when all the women folk were sleeping. Prosecutrix's version is that she was suddenly woken up and found a person on top of her body indulging in sex with her, and for a few moments she thought it was her husband. She having realised it was not so and not her husband who would not have done such an act in such an inhuman manner raised cries and others in the vicinity gave chase and apprehended the Appellant.

In the above background of facts the learned trial Judge cannot be faulted under any circumstances for the sentence already imposed. A longer than commensurate sentence may be passed only if the offender has been convicted of a violent or a sexual offence. As such the Court of Appeal is not bound to substitute a shortened sentence. On one hand the Court of Appeal as a Superior Court is bound to protect the society of identified evils. On the other, some consideration may have to be extended to the offender allowing himself to be reformed.

We have heard and considered the submissions of learned counsel for the Appellant and learned Additional Solicitor General. Having given our mind to all aspects of sentencing, we impose a sentence of 12 years rigorous imprisonment. Fine imposed by the learned High Court Judge remains unaltered, but direct that compensation in a sum of Rs. 2500/- be paid to the victim and in default of payment of compensation a sentence of 6 months simple imprisonment is also imposed. Sentence of imprisonment of 12 years R.I will begin to run from the date of conviction of Accused.

Subject to the above variation on sentence this appeal stands dismissed. Registrar of this court is directed to forward this order and the record to the relevant High Court.

Sentence altered.

~~JUDGE OF THE COURT OF APPEAL~~

P.R. Walgama

I agree.

~~JUDGE OF THE COURT OF APPEAL~~