

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

C. A. No. 133/2011

H.C. Panadura Case No. 2385/2007

Hewa Waravitage Sumith alias Manju,
No.42/4 Galpoththa Watta,
Thumbovila,
Piliyandala.

Accused- Appellant

Vs.

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

Plaintiff- Respondent

C. A. No. 133/2011

H. C. Panadura Case No. 2385/2007

Before : Vijith K. Malalgoda, P.C., J (P/CA) &
H.C.J. Madawala, J.

Counsel : R. H. Hewakonara for the Accused-Appellant.
Dilan Ratnayake, S.S.C., for A.G.

Argued &
Decided on : 13.10.2015.

Vijith K. Malalgoda, P.C., J (P/CA)

The matter is taken up for argument today. Counsel for the accused-appellant has taken up several grounds of appeal before us.

- (1) Whether the learned trial Judge's judgment was contrary to the law or contrary to the evidence led at the trial.
- (2) Learned trial Judge failed to identify the importance of the medical evidence and specially in the case of rape the independent corroboration was the medical evidence.

- (3) Did the learned trial Judge correctly apply the test of probability, credibility and spontaneity when deciding the credit worthiness of the evidence given by prosecutrix and her mother.
- (4) Learned trial Judge had not properly evaluated the evidence given by the prosecution witnesses to come to the decision that the prosecution have not been proved the charge of rape beyond reasonable grounds.

The prosecutrix in this case Ganga Hasaanthi Kodagoda was 10 years when she was raped by the accused-appellant namely Hewa Waravitage Sumith alias Manju who is her mother's sister's son. This incident had taken place on 29.09.1998 at Tumbowila, Piliyandala. According to the prosecutrix version, the prosecutrix and the accused were living in adjoining houses and the day in question around 10 a.m. in the morning the accused called her by her pet name and wanted her to bring some tea leaves. She went home took some tea leaves from her mother and came to the accused's house in order to give him tea leaves. At that time the

accused was in the front room and when she went to him with the tea leaves he wanted her to keep it on the table. When she was about to leave the house after keeping the tea leaves on the table the accused had hit on her head and pulled her into a room and thereafter pushed her on to a bed, removed the under pant she was wearing and after removing his clothes got on to her body and raped her. She explained in her evidence as to how the said act took place in detail and thereafter hearing the voice of her mother the accused had released her. Even though she complains of pain in her private parts she says that she did not see anything on her body thereafter. When she came out she saw the mother near the fence and she immediately complained to her mother of the incident. Thereafter the mother had scolded the accused and went to the house of the accused's sister and after complaining her the incident, went to Piliyandala Police Station around 12.00 noon. The girl was examined by the Medical Officer on the same day around 4.00 p.m. According to the evidence of Doctor Senanayake the Medical Officer, he had not observed any external injuries on her body but observed very small tare which was about 2 mili

meters at 5 O' Clock position and also observed redness around the said injury. We observed that a prompt complaint had been lodged at the Police Station and the medical evidence corroborates the version given by the prosecutrix. Even though the Counsel for the accused-appellant brought to the notice of Court certain contradictions inter se with the prosecutrix and her mother, specially with regard to the clothes she wore at that time, this Court is not inclined to take them as serious issues since a girl who was only ten years at that time is not expected keep everything in her memory for so long. The girl was 21 years of age when she was giving evidence. However the Counsel for the accused-appellant failed to submit any material contradiction in this case. Under these circumstances we see no reason to interfere with the findings of the learned High Court Judge. We see no merit in the four grounds of appeal raised by the Counsel for the accused-appellant. Therefore we are not inclined to interfere with the decision of the learned trial Judge. The appeal is accordingly dismissed. However considering the fact that the accused was in remand custody since the time of his conviction and also considering the age of the accused we decide to make order to

operate the said sentence of ten years R.I. already imposed, from the date of conviction i.e. with effect from 18.01.2011. Rest of the sentence will remain unchanged. Subject to the above variation the appeal stands dismissed.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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