

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

In the matter of an appeal in terms of
Section 331(1) of the Code of Criminal
Procedure Act No. 15 of 1979 read with
Article 138(1) of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

Democratic Socialist Republic of Sri
Lanka

COMPLAINANT

Vs

Hewa Hakuru Somadasa

ACCUSED

C.A.Application No. 228/2010

High Court Balapitiya

Case No. 1158/2008

AND NOW

Hewa Hakuru Somadasa

ACCUSED – APPELLANT

Vs

The Attorney General

Attorney General's Department

Colombo 12.

RESPONDENT

BEFORE

: Deepali Wijesundera J.

L.U. Jayasuriya J.

COUNSEL

: Amila Palliyage for the

Accused - Appellant

H.I. Peiris D.S.G. for the

Attorney General

ARGUED ON

: 23rd May, 2017

DECIDED ON

: 23rd June, 2017

L.U. Jayasuriya J.

The accused – appellant was indicted in the High Court Balapitiya under Section No. 364 (3) of the Penal Code for committing rape on his daughter named Priyadarshanie and was convicted and sentenced to 15 years RI.

The story of the prosecution is that on the day of the incident the appellant, the prosecutrix and her husband have gone to visit prosecutrix's mother in the night whose house was about five minutes walking distance from the prosecutrix house. On the way they spent the night in someone else's house which the prosecutrix said belonged to an

old man. All three of them have slept in the same room and in the morning they have left for the prosecutrix's mother's house.

While they were walking, the appellant had assaulted the prosecutrix's husband and chased him away. Thereafter appellant had thrown a sarong on the ground and had raped the prosecutrix thrice.

The ground urged by the appellants counsel is that;

1. The evidence placed before the High Court has not been analyzed by the High Court Judge properly.

The prosecutrix while giving evidence in chief has stated that her husband accompanied her (vide page 44 of the brief) while being cross examined she has admitted that her husband was assaulted and chased away by the appellant before leaving her house.

She has admitted to court (vide page 100 of the brief) that all she said in evidence was not true. The appellant had given evidence and has been cross examined. We find that his testimony had been uncontradicted.

On a perusal of her evidence I find that the prosecutrix has not been a consistent and a reliable witness. She has admitted to court that all she said was not true. It is unsafe for the High Court Judge to convict an accused on her evidence. Therefore I decide to set aside the judgment dated 12/05/2010 and acquit the accused appellant.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.

I Agree

JUDGE OF THE COURT OF APPEAL