

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

An appeal under section 11 of the Provincial High Courts (Special Provisions) Act No. 19 of 1990 read with sections 331 (1) and (4) of the Code of Criminal Procedure Act No. 15 of 1979.

Democratic Socialists Republic of Sri Lanka

COMPLAINANT

Vs

Abdul Safhir Mohomad Finaz

ACCUSED

Case No. CA 43/2016

HC Puttalam Case No. 21/2013 **AND NOW**

Abdul Safhir Mohomad Finaz

ACCUSED – APPELLANT

Vs

Attorney General

Of the Democratic Socialist Republic
of Sri Lanka

COMPLAINANT - RESPONDENT

BEFORE

: Deepali Wijesundera J.

: L.U. Jayasuriya J.

COUNSEL

: D. Weerasuriya PC for the

Accused – Appellant

L. Karunanayake SSC for the

Attorney General

ARGUED ON

: 10th July, 2017

DECIDED ON

: 28th July, 2017

Deepali Wijesundera J.

The accused appellant was indicted in the High Court of Puttalam under section 362 (2) e of the Penal Code. He was convicted after trial and sentenced to 10 years RI and a fine of Rs. 5,000/= with a default term of six month RI was ordered. He was ordered to pay Rs. 1,00,000/= as compensation to the victim with a default term of 2 years.

The prosecutrix has been sixteen years of age and a minor when the incident took place. She has been living with her boy friend and has been six months pregnant, according to medical evidence.

The appellant who was the Grama Sevaka of the area has visited the prosecutrix and has asked her to come to his office to sign some

papers in order to obtain a loan to construct a house. With permission from her partner she has gone to the Grama Sewaka's office on a Saturday to sign the forms. The appellant is alleged to have raped her on a chair which was kept in his office. The prosecutrix has told her partner about this two days after the incident. Thereafter a complaint was made by an aunt to the child protection authority and subsequently the local police has recorded her statement and proceeded to arrest the accused.

The grounds of appeal urged by the appellant are that the complaint was belated and the version of the prosecution was not probable. He also stated that the contradictions per - se and inter - se have not been considered by the learned High Court Judge. He also stated that the evidence placed before court has not been properly analysed.

The evidence of the prosecutrix and the aunt reveals that the prosecutrix's partner used to assault her when they had arguments therefore fearing his wrath she has kept silent until he questioned her. This explains why she kept silent for two days. It was held in **Ajith Samarakoon Vs The Republic 2004 2 SLR 2009** if the delay can be explained the court can act upon such evidence.

On the argument of probability as argued by the appellant's learned President Counsel there had been no enmity among the parties and the prosecutrix and her partner who were living together would not have wanted to involve in a dispute with the Grama Sewaka. The prosecutrix's partner had already been prosecuted for having sexual intercourse with a minor.

The learned counsel argued the act of rape would not have been possible on a chair. The Doctor while giving evidence has testified under cross examination that it is possible to have taken place on a chair. The counsel for the appellant argued that the Grama Sewaka's office is situated next to other officers and that it is not probable to rape a person in such an environment which we find is not correct. There is no evidence to suggest that the office of the Grama Sewaka was in an open area. The Samurdhi Officer who has given evidence on behalf of the defence has admitted his office which is next door is in an enclosed area.

Section 3 of the Evidence Ordinance states;

"a fact is said to be proved when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the

circumstances of the particular case, to act upon the supposition that it exists”.

We find that the prosecutrix has testified on two occasions namely on 28/01/2014 and on 07/07/2015 and she has narrated the main incident without any contradictions. There are minor contradiction with regard to the appellant's visit to the house which do not go to the root of the case as stated by the learned High Court Judge.

For the afore stated reasons I find that the learned High Court Judge has given a well considered judgment after evaluating the evidence. I affirm the judgment given on 30/05/2016.

The appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya J.

I agree.

JUDGE OF THE COURT OF APPEAL