

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

G.P. Manjula Sisira Kumara

Accused – Appellant

C.A. Application No. 81/2016

High Court Kandy 132/2004

Vs

Hon. Attorney General

Respondent

BEFORE

: Deepali Wijesundera J.

L.U. Jayasuriya J.

COUNSEL

: R. Chula Bandara for the

Accused – Appellant

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

Attorney General

ARGUED ON

: 01st June, 2017

DECIDED ON

: 28th July, 2017

Deepali Wijesundera J.

The appellant was charged under section 364 (1) of the Penal Code (as amended) for committing rape on Herath Mudiyanseelage Chandralatha. He was convicted to 18 years RI after trial and was also imposed a fine of Rs. 20,000/= carrying a default sentence of 2 years. He was ordered to pay Rs. 300,000/= as compensation to the prosecutrix. This appeal is from the said conviction and sentence.

On or about 05/01/2000 the appellant has gone to Chandralatha's house between 9 and 10 asking for a glass of water, after the water was given he had gone away. On the same day he has come again in the night between 12.00 and 1.00 while they were sleeping. He has banged on the door saying that he is Manjula from "Sagara" asking the door to be opened and has threatened if he forced open the door he will harm Chandralatha's daughter. Fearing that he might harm the daughter she has opened the door. A lamp has been burning on a chair, when she opened the door. As soon as the door was opened the appellant has dragged the prosecutrix to a room outside. Appellant has raped her repeatedly and threatened to set fire to the house if she shouted. Chandralatha has categorically stated that she did not consent to the sexual act (vide p. 66 and 68 of the brief).

Medical evidence shows that the act of sexual intercourse has been done without her consent. This position has not been challenged in the High Court. The Judicial Medical Officer has testified that by the nature of the injuries he could specifically state that there has been no consent. (vide p. 205 and 206 of the brief).

The learned counsel for the appellant argued that the complaint to the police was made two days after the incident, the incident had taken place on the 8th and the complaint was made on the 10th of January 2000. The appellant said this shows the act was done with consent.

It was held in **Ajith Samarakoon vs the Republic AG (2004) 2 SLR 210** *"Just because the statement of a witness is belated the Court is not entitled to reject such testimony. In applying the test of spontaneity, the test of contemporaneity and the test of promptness the court ought to scrupulously proceed to exercise the reasons for the delay. If the reasons for the delay are justifiable and probable the trial judge is entitled to act on the evidence of a witness who had made a belated statement"*.

In the instant case the prosecutrix has been living alone with her two young children while the husband was serving a jail term, this explains the delay. Anyway the appellant has not taken this defence in the High Court.

The identity of the appellant had been proved in the High Court. It has also been proved that the act of sexual intercourse was done against the prosecutrix's consent. This is an ideal case where the prosecutrix has presented cogent evidence. Although the medical evidence supports her evidence the prosecutrix's evidence is more than sufficient to convict the appellant as there is no doubt on the identity of the appellant and also that it was committed without consent.

For the afore stated reasons we dismiss the appeal. The judgment dated 31/03/2016 is affirmed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya J.

I agree.

JUDGE OF THE COURT OF APPEAL