

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

**In the matter of an appeal under
and in terms of Section 331 of the
Criminal Procedure Code Act No.
15 of 1979.**

The Attorney General of the Democratic
Socialist Republic of Sri Lanka.

Complainant

Disanayake Mudiyanseelage Premadasa.

**Court of Appeal
Case No. CA 164/2013**

Accused

Vs,

And Now Between

Disanayake Mudiyanseelage Premadasa.

Accused-Appellant

**High Court of Moneragala
Case No. HC 169/ 2008**

Vs,

The Attorney General of the Democratic
Socialist Republic of Sri Lanka

Complainant-Respondent

**Before : S. Thurairaja PC, J &
A.L. Shiran Gooneratne J**

**Counsel : Tirantha Walaliyadda PC, with Roshanara Abeywardana Attorney-
at-Law for the Appellant.**

A.R.H. Bary SSC for the Respondent.

Written Submissions : Accused Appellant – 23rd January 2018.

Complainant Respondent- 22nd October 2018.

Argument on : 18th October 2018.

Judgment on : 30th November 2018.

JUDGMENT

S. Thurairaja, PC. J

The Accused – Appellant, Disanayake Mudiyanseelage Premadasa (hereinafter sometimes referred to as the Appellant) was indicted in the High Court of Moneragala, under Section 357 and 364(2)(e) of the Penal Code. After the trial, the Accused-Appellant found guilty for both offences and sentenced to 7 years Rigorous Imprisonment and 15 years Rigorous Imprisonment for the respective offences. The Learned Trial Judge further orders both sentences to be run concurrently.

Being aggrieved with the said conviction and sentence the Appellant had appealed to the Court of Appeal and submitted only one ground of appeal. ie the identification of the Appellant is not proved.

The prosecution led the evidence of Halgahapolage Indika Pushpa Kumari (victim), Halgahapolage Piyadasa (PW 2- Father of the victim), Halgahapolage Shayamali Saman Kumari (PW3-Sister of the victim), Doctor Ganesha Pillai Annaraj (Judicial Medical Officer), Inspector of Police Herath Mudiyanseelage Abeysinghe (PW4) and Police Sergeant Algewiyanlage Sunil Shantha (PW8).

According to the prosecution witnesses on the 16th of May 1998, the prosecutrix who was 13 years 7 months and 10 days old had gone to have bath with her sisters to the nearby stream. At that time there was somebody had pelted stones at them. Then, the sister of the prosecutrix had inquired, who is it. The victim then set out to their home to complain about this incident to her father. She wore a t-shirt on top of her wet bathing clothes and walked towards their home. On the way, the Appellant and another encountered her and inquired about her going. There, she was informed

that, they have nothing to do with her but they want to take revenge on her sister. After a brief quarrel, the Appellant stuffed clothes on her mouth and carried her away. There she felt unconscious. When she re-gained conscious after a while, she was found lying naked with both hands and legs were tied. Further she had a severe pain on her lower abdomen. She also observed of bleeding through her vagina. Since it was dusk, her father came in search of her and found her. Thereafter she was untied, dressed up and taken home. On the following day, she was taken to the Police and the Hospital. She identified the assailant as a son of "Kelin Mudalali". She was taken to the house of the Appellant, there she saw the brother of the assailant and said he is not the person. Thereafter, when she went to the Hospital, she was given a lift by the Police officers, when they were travelling near the Police Station, she had pointed at the Appellant and identified that he was the person, who committed this offence on her.

The main and only ground of appeal is that, the identity of the Appellant was not established.

Considering the facts of the case, it was revealed that, Kelin Mudalali had six children. Three of them are small children aged 13, 10 and 8. Police excluded them and searched for other three children. When they went to the house, she saw the 18 year old child and said that he is not the person. Then the Police were left with two elder sons. Both were taken to the Police Station by another team of Police Officers, when they were in the compound, the victim who came there, pointed at the Appellant (who was the eldest son of Kelin Mudalali), and said that, he was the one who committed this offence on her.

It was revealed that, all of them are from the same village. The victim knew the Appellant and others but not by name. The Learned Trial Judge was also mindful that, the victim was a child of 13 years of age.

The Learned Trial Judge had adequately considered the evidence against the Appellant and came to his conclusions. Further we observed that, the Learned High

Court Judge taken extra care of the proof of the identity of the Appellant. We are convinced that, the findings of the Learned Trial Judge are well founded. Under these circumstances, we do not find any reasons to interfere with the findings of the Learned Trial Judge.

Regarding the sentence the Learned Trial Judge has given opportunity to both Counsels to make submissions. After considering the aggravating and mitigating circumstances, had imposed 7 years Rigorous Imprisonment and a fine of Rs. 25,000/- in default 2 years Rigorous Imprisonment for the 1st count.

For the 2nd count 15 years Rigorous Imprisonment and a fine of Rs. 25,000/-, in default 4 years Rigorous Imprisonment. In addition, that he was ask to pay Rs. 200,000/- to the victim child, in default 2 years Rigorous Imprisonment.

Further the Trial Judge ordered the substantive sentence for the 1st and 2nd count to be implemented concurrently.

After carefully considering the conviction and the sentence we find that, we have no reason to interfere with the same. Hence, we dismiss the appeal and affirm the conviction and the sentence. Sentences to be implemented from today.

Appeal Dismissed.

JUDGE OF THE COURT OF APPEAL

A.L. Shiran Gooneratne, J

I agree,

JUDGE OF THE COURT OF APPEAL