

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

CA 40/2015
HC KANDY HC 163/2013

P.G. Sunil
No: 53,
Udangamuwa.

Appellant

Vs.

Attorney General
Attorney General's Department
Colombo 12.

Respondent

BEFORE : W.M.M. Malinie Gunaratne, J. &
S. Devika de L. Tennekoon, J.

COUNSEL : Neranjan Jayasinghe for the accused-appellant.
L. Karunanayaka SSC for the AG.

ARGUED &
DECIDED ON : 19.05.2016

W.M.M. MALINIE GUNARATNE, J.

Accused-appellant is present in Court today produced by the Prison Authorities.

This is an appeal preferred against the conviction and the sentence imposed upon the accused-appellant, by the learned trial Judge of Kandy dated 29.04.2015.

The accused-appellant was indicted in the High Court of Kandy for committing rape and unnatural offence punishable under Section 364(1) and 365 (B) 2 (A) respectively.

After trial the accused-appellant was found guilty for the 1st count and acquitted from the 2nd count. Learned trial Judge sentenced the accused-appellant to a term of 15 years rigorous imprisonment and a fine of Rs. 2500/- with a default sentence of 6 months rigorous imprisonment.

At the hearing of this appeal learned Counsel for the appellant highlighted the following defects of the Judgment.

(1) Although the 1st charge was rape that there was no clear evidence for that

(ii) The learned trial Judge had not considered the defense and had only merely narrated the dock statement.

(iii) No proper identification of the accused-appellant, only a voice identification.

However, the learned Counsel for the accused-appellant submitted he has no objection if the court can consider to reduce the charge, for Section 345 of the Penal Code and convict the accused-appellant for that charge.

Learned Senior State Counsel concedes that there are some infirmities in the evidence with regard to the act of rape, but urges to consider the other acts committed by the accused which the victim had described and supported by the medical evidence which is quite consistence.

Having taken into consideration the submissions made by the counsel, we have carefully considered the oral evidence and circumstances available in the case and we are of the view that there is merit in the submissions made by the learned Counsel for the accused-appellant.

Hence, we are of the view, that this is not a fit case to convict the accused-appellant for charge of rape. Considering the infirmity on record this Court is entitled to legally justify in considering a conviction under Section 345 of the Penal Code.

Hence, we set aside the conviction and sentence entered against the accused-appellant under Section 364(1) of the Penal Code, and convict him under Section 345 of the Penal Code and impose a sentence of rigorous imprisonment for a period of 05 (five) years. In addition Rs. 25,000/- to be

paid to the victim as a compensation In default we order 6 months simple imprisonment. The fine should be remained as it is.

The sentence imposed on the accused-appellant shall be implemented from today.

Subject to the above variations the appeal stands dismissed.

The Registrar is directed to forward the original case record to the High Court of Kandy for the implementation of the said sentence.

JUDGE OF THE COURT OF APPEAL

S. DEVIKA DE L. TENNEKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL

KRL/-