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

In the matter of an Appeal made  
under Section 331 of the Code of  
Criminal Procedure Act No.15 of  
1979

CA 252/2018  
HC/ KANDY/ 94/2012

Ranatunga Mudiyanse Udeni  
Bandara Ranatunga

**ACCUSED-APPELLANT**

vs.

The Hon. Attorney General  
Attorney General's Department  
Colombo-12

**COMPLAINANT-RESPONDENT**

**BEFORE** : Devika Abeyratne J  
P. Kumararatnam J

**COUNSEL** : Mr Dimuthu Senerath Bandara with Mr.Malidu  
Peiris for the Appellant.  
Mr.Riyaz Bary SSC for the Respondent.

**ARGUED ON** : 01/02/2021

**DECIDED ON** : 05/03/2021

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## JUDGMENT

### **P. Kumararatnam J**

- [01] The above-named Accused-Appellant (hereinafter after referred as the Appellant) was indicted by the Attorney General for committing an offence under section 364(1) of the Penal Code on Madurappulige Nimali Vijayanthi Fernando on or about 11<sup>th</sup> of February 2008 in the High Court of Kandy.
- [02] After a Non-Jury trial the Appellant was convicted as charged and was sentenced to 12 years RI and a fine of Rs.20000/-. In default 01-year RI imposed. In addition, Rs.200000/- was imposed as compensation payable to the victim with a default sentence of 03 years RI.
- [03] Being aggrieved by the aforesaid conviction and sentence the Appellant preferred this appeal to this court.
- [04] The Learned Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence due to Covid 19 pandemic.
- [05] On behalf of the Appellant following Grounds of Appeal are raised.
- A. The Learned trial Judge has failed to correctly evaluate the evidence relating to the identity of the Appellant.
  - B. The Learned Trial Judge failed to make a determination that the prosecution had proved the identity of the appellant beyond reasonable doubt, but has acted on a mere presumption as to his identification.
  - C. The Learned Trial Judge has failed to consider the importance of the omission brought up by the defence and especially their effect on the credibility of the prosecutrix.
  - D. The Learned Trial Judge has failed to consider the improbabilities of the prosecution version on the alleged incident.

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- E. The Learned Trial Judge has erred in disregarding the glaring discrepancies between the evidence of the prosecutrix and medical evidence.
- F. The Learned trial Judge has failed to consider the lack of credibility of the prosecutrix and has erred in law by neglecting the need of cogent evidence on her part, especially in the absence of any corroborating evidence.

[06] The prosecutrix in this case was living with her parents. She was unmarried at the time of the incident. On the date of incident her mother was hospitalized and she remained with her father who was 77 years of age at that time. On that day at about 10.00pm when she went to the toilet from the rear door to answer a call of nature a person had suddenly appeared from rear of the toilet, dragged her after covering her mouth. Thereafter she was put on the rough unfinished surface and raped. Though she could not identify the person when he grabbed her from her behind but she identified the Appellant when she was put on the ground and raped. According to the prosecutrix she identified the Appellant from the light emanating from her house and from the street light. The toilet was situated behind her house.

Initially, she could not shout properly due to fear but raised cries when she was raped by the Appellant. When her father responded to her cries the Appellant had fled the scene very quickly. At that time the prosecutrix did not disclose the act of rape to her father but informed the same to her mother on the following day and lodged the complaint to the police. Her father had passed away before giving evidence in court.

When the defence was called the Appellant had made a dock statement and denied the incident.

[07] At the hearing the Learned Counsel for the Appellant had submitted his argument in respect of appeal grounds A and B together. His contention was that nowhere in the evidence of the victim has mentioned that the appellant was identified by the light of the room inside the house and/or the street light. Therefore, it is essential that the trial judge should have

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evaluated the evidence with regard to such light to determine whether the court be satisfied as to whether such light was sufficient to correctly identify the Appellant.

The prosecutrix in her evidence had vividly explained the light condition of the place of incident. As her house was under construction, no windows had been fixed to her room and to the third room. On that day the 03<sup>rd</sup> room light was kept on. Further a street light was also on at that time. With these lights the place of incident was properly illuminated at that time.

The identity of the Appellant had been revealed to the Medical Officer who examined the prosecutrix after the incident. This had further strengthened the prosecution case in respect of identity of the Appellant.

As there was no any contradiction or omission marked during the trial with regard to the identity of the Appellant, the Learned High Court Judge had very correctly concluded that the identity of the Appellant had been very well established by the prosecution in this case.

In **Punchibanduge Wijesinghe Rajaratne v. Attorney General** CA 13/1994 decided on 23.01.1996 is a judgment which accepted the uncorroborated testimony of the prosecutrix, where the evidence of the identity of the accused solely on the evidence of the complainant. It was held that:

*“in the circumstances of the case it would have been unnecessary to tell the jury additionally that it was uncorroborated in regard to the identity of the accused.”*

Further, Turnbull Principles will not apply to the instant case as the Appellant was a known person to the prosecutrix and the place of incident was properly illuminated in the night when the incident took place.

Hence this appeal ground has no merit.

[08] The Counsel for the Appellant advanced his second ground with the amalgamation of appeal grounds C and D. In his argument it was submitted that the prosecutrix has deliberately tried to change or develop

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her evidence, especially when improbabilities in her story were highlighted during cross examination.

During the cross examination the prosecutrix told court that when she was grabbed, she could not raise cries properly due to fear. But she had raised cries despite her mouth being forcibly closed by the Appellant. In addition, she had said that her father was suffering from hearing difficulty at that time. As this was not told to police the relevant portion was marked as an omission during the trial.

In the further cross examination, the prosecutrix told court that she only told her father that the Appellant had assaulted her. She did not reveal the rape incident. She further told that when she told about the assault, her father had asked her where was the Appellant. This portion was marked as an omission during the trial.

In her further cross examination, the prosecutrix told court that after the sexual assault when she went to her room, the Appellant had thrown a mortar in to her room through the grill of the window. According to her this incident had been seen by her father. But she had failed to tell this to the police. Thus, this was marked as an omission.

Under our law the trial judge could disregard minor contradictions and omissions in a case if such contradictions and omissions do not go to the root of the case. This orthodox position has been affirmed by several cases in Sri Lanka. In the case of Mazur Ivegen & Iana Bereznah vs AG SC/TAB/1/2015 Supreme court held that:

*“the contradictions and omissions marked by the defence are minor contradictions and omissions which did not go to the root of the prosecution case and therefore the lower court have correctly disregarded the contradictions and omissions.”*

In the case of **The Attorney General v. Sandanam Pitchi Mary Theresa** [2011] SLR Vol. 2 pg. 292 held,

*“Whilst internal contradictions or discrepancies would ordinarily affect the trustworthiness of the witness statement, it is well established that the Court must exercise its judgement on the nature of the*

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*inconsistency or contradiction and whether they are material to the facts in issue. Discrepancies which do not go to the root of the matter and assail the basic version of the witness cannot be given too much importance.*

*Witnesses should not have disbelieved on account of trifling discrepancies and omissions. When contradictions are marked, the Judge should direct his attention to whether they are material or not and the witness should be given an opportunity of explaining the matter."*

In this case the Learned Trial Judge had properly considered above mentioned omissions and came to a correct conclusion that the omissions marked are incapable of creating a doubt on the prosecutrix's evidence.

Hence this appeal ground too has no merit.

[09] The next complaint of the Appellant is that the due consideration has not been given to the discrepancies between the evidence of the prosecutrix and the medical evidence.

Although the prosecutrix stated that she was unmarried and never had sex with anybody, the medical evidence revealed that she would have either engaged in sexual intercourse more than once or could have inserted any tools repeatedly in to the vagina for some time. The learned High Court Judge has considered this discrepancy in detail at page 214-215 of his judgment and correctly held that this discrepancy will not lead to disbelieve in the evidence of the prosecutrix.

The Counsel for the Appellant further argued that if the version of the prosecutrix is true, she should have sustained more injuries on the back of her body than mere tenderness, that only in two places. Hence it is difficult to believe she did not sustain at least a small abrasion or a single contusion on the back side of the body.

On perusal of the Medico-Legal Report of the prosecutrix, she had sustained four painful injuries two on the back of the body and two on the back of the fingers. According to the doctor all these injuries quite compatible with the history given to the doctor by the prosecutrix.

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As the medical evidence is properly analysed and considered in the judgment by the Learned High Court Judge, this ground of appeal too has no merit.

[10] Finally the Counsel of the Appellant contented that the Learned Trial judge has failed to consider the lack of credibility of the prosecutrix and has erred in law by neglecting the need of cogent evidence on her part, especially in the absence of any corroborating evidence.

Justice Dheeraratne in **Sunil and others v. Attorney General** [1986] 1 Sri.L. R 230 held that:

*“Corroboration is only required or afforded if the witness requiring corroboration is otherwise credible. If the evidence of witness requiring corroboration is not credible his testimony should be rejected and the accused acquitted. Seeking corroboration of a witness’s evidence should not be used as a process of inducing belief in such evidence where such evidence is not credible.*

*It is very dangerous to act on the uncorroborated testimony of a woman victim of a sex offence but if her evidence is convincing such evidence could be acted on even the absence of corroboration.”*

In **Bhuginbhai Hirjibhai v. State of Gujarat** [1983] AIR 753 Indian Supreme Court stated that:

*“refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury.”*

In this case the evidence given by the prosecutrix was not tainted with any contradiction. Although she had not informed her father about rape on that night, but informed her mother on the following day and lodged her complaint in the police.

According to the prosecutrix the Appellant could not perform full sexual intercourse due her resistance and shouting for help. Although she raised cries only her father responded but not the neighbours. Further there was no reason for her to implicate anyone other than the Appellant. Considering the

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evidence of the prosecutrix she was consistent right throughout in revealing the incident.

This ground of appeal also fails as the Learned High Court Judge very correctly acted on the overwhelming evidence given by the prosecutrix.

[11] We are of the view that there is no necessity to interfere with the conviction of the Appellant. We therefore affirm the conviction and the sentence imposed upon the Appellant.

Appeal is dismissed.

**JUDGE OF THE COURT OF APPEAL**

**DEVIKA ABEYRATNE, J**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**