

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

In the matter of an application for Special Leave to Appeal under and in terms of Section 9(a) of the High Courts of the Provinces (Special Provisions) Act No.19 of 1990 reads with Article 128 of the Constitution.

SC. Appeal No.114/2017

SC.(SPL) LA Application No.262/15

High Court of Kurunegala Case

No.29/13 Appeal

Magistrate's Court of Wariyapola

No.84309/2011

Edmange Sampath Amarasiri,
Pahala Minuwangete,
Minuwangete.

Accused-Appellant-Petitioner

Vs.

Officer-in-Charge
Police Station,
Wariyapola.

Complainant-Respondent-Respondent

Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondent-Respondent

BEFORE : **SISIRA J. DE ABREW, J.**

K.T. CHITRASIRI, J. &

L.T.B. DEHIDENIYA, J.

COUNSEL : Saliya Pieris PC with Thanuka Nandasiri for the
Accused-Appellant-Petitioner.

Varunika Hettige DSG for the Respondent-
Respondent.

ARGUED &

DECIDED ON : 07.02.2018.

SISIRA J. DE ABREW, J.

Heard both Counsel in support of their respective cases. The Accused-Appellant in this case was convicted for the offence under Section 344 of the Penal Code. He was sentenced to 2 months simple imprisonment suspended for 5 years. He was also ordered to pay a fine of Rs.1000/- . In default of the fine, he was sentenced to one month's simple imprisonment. Being aggrieved by the said judgment of the learned Magistrate, the Accused-Appellant appealed to the High Court. The High Court by his judgment dated 28.10.2015 affirmed the conviction and the sentence. Being aggrieved by the said judgment of the High Court the Accused-Appellant has appealed to this Court. This Court by its order dated 07.06.2017 granted Leave to Appeal on questions of law set out in paragraph 16(c), (d), (e) and (f) of the Petition of Appeal dated 02.12.2015 which are set out below.

- (1) Whether both the prosecution witnesses Kariyawasam Ranathungalage Mangalika Wijekirthis and Kariyawasam Ranathungalage Chandra Wijekirthis are not credible witnesses and therefore the conviction and sentence cannot stand on such evidence?
- (2) Whether the learned Magistrate has erred in holding that there was no motive on the part of the virtual complainant to falsely

implicate the Petitioner, despite there being ample evidence to show that the virtual complainant was objecting to her land being taken to widen the village roadway?

- (3) Whether the tainted, unsteady and improbable evidence of the prosecution witness Kariyawasam Ranathungalage Mangalika Wijekirithi cannot be strengthened by the corroboration of her sister who was not an independent witness?
- (4) Whether both the learned High Court Judge and the learned Magistrate erred in law by shifting the burden of proof to the Petitioner?

The facts of this case may be briefly summarized as follows,

The Accused-Appellant who was the Grama Sevaka of the area went to the Complainant's house in order to make some inquiries about an expansion of the road. In the compound of the Complainant, the Accused-Appellant exposed his person to the Complainant. Soon after this incident, the Complainant ran into the house of her sister and brought the sister to the compound. When the Complainant and the sister both were present in the compound, the Accused-Appellant again exposed his person to both women. The Complainant and her sister have given this evidence. The evidence of the Complainant has therefore been corroborated by the sister.

The Accused-Appellant too gave evidence in the witness box. Accused-Appellant denied the position. However, Accused-Appellant admitted that he went to the compound of the Complainant in order to make some inquiries with regard to an expansion of the road. He, in his evidence takes up the position that there was an altercation between him and the Complainant with regard to the taking of complainant's land for the expansion of the road. He has made an entry in his diary to this effect, marked V1. The learned President's Counsel for the Accused-Appellant submits that the evidence of the Accused-Appellant has been wrongly rejected by the Learned Magistrate. I now advert to the above contention.

If the Accused's evidence creates a reasonable doubt in the prosecution case, the Accused is entitled to be acquitted. In ***Queen Vs. Kularatne 71 NLR page 529***, this Court observed the following rules with regard to a dock statement of an Accused,

1. If the dock statement of the Accused is believed it must be acted upon.
2. If the dock statement creates a reasonable doubt about the case for the prosecution, the defence must succeed.

The above rules are also applicable to the evidence given by an accused person in the witness box.

The most important question that must be decided in this case is whether the evidence of the Accused-Appellant creates a reasonable doubt in the prosecution case. Although, the Accused takes up the position that there was an altercation between him and the Complainant, he has failed to make a complaint to the Police or to his superiors with regard to the said altercation. The Accused-Appellant takes up the position at page 53 that if there was an altercation of this nature he should have complained it to the Divisional Secretary of the area. He admits that he had not done so. He further admits that he did not complain to the Police. He has failed to give any reason as to why he did not complain to the Police. We have examined his entry made in the diary which was marked "V1". In the said diary he admits that he visited the place of the Complainant. But he has not produced any document or any decision of the government relating to the expansion of the road. When we examine the said entry we are unable to find that there was any request by the villagers to expand the road. When we consider all the above evidence, we feel that the evidence of the Accused-Appellant does not create any reasonable doubt in the prosecution case. We also hold that the rejection of the evidence of the Accused-Appellant by the Magistrate is correct.

Considering all the evidence led at the trial, we hold that the prosecution has proved its case beyond reasonable doubt. In view of the conclusion reached above, we answer the questions of law raised by the Accused-Appellant in the negative. For the above reasons, we affirm the judgment of the High Court Judge and the Magistrate and dismiss this appeal.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

K.T. CHITRASIRI, J.

I agree.

JUDGE OF THE SUPREME COURT

L.T.B. DEHIDENIYA, J.

I agree.

JUDGE OF THE SUPREME COURT

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