

*Present : Sirimane, J., Wijesundera, J. and Ratwatte, J.*

W. H. PIERIS *and* three others *vs.* THE ATTORNEY-GENERAL

*S. C. 6-9/75—H. C. Gampaha 96/74*

*Evidence—Identity—Charge of Rape.*

Where the evidence of identity rested on the sole uncorroborated testimony of the prosecutrix and the circumstances under which the "identification" took place left no room for the person seeking to identify to choose between a right identification and a wrong identification—

*Held :* It is unsafe to allow the conviction to stand, in the circumstances of the case.

Appeal against conviction at a trial before the High Court, Gampaha.

*A. N. Ratnayake*, for the accused-appellants.

*D. S. Wijesinghe*, Senior State Counsel for Attorney-general.

21st May, 1975. SIRIMANE, J.

The four appellants in this case were charged with the four acts of rape committed on one Chandrawathie. The incident briefly was that they had broken into her house at a time when her husband was not at home dragged her out into a thicket and each of the four accused committed the offences on her. The only question that arises for decision in this case is the question of identity of the four accused. As far as the 2nd accused is concerned Chandrawathie knew him both by sight and by name and there is evidence that in her first statement to the Police and also earlier to the Grama Sevaka she had mentioned his name as Nandasena. In respect of the other three persons she had given

the descriptions to the Grama Sevaka who was the first person to meet her after this incident. The Grama Sevaka was accompanied by certain members of the Vigilance Committee and Chandrawathie says that those members gave the names of the other three accused when she described them. She was thereafter taken to hospital and whilst in hospital on the following afternoon all four of the accused including the person whom she knew and whom she had named Nandasena were produced before her in the presence of the Doctor and she identified all four as the four persons who committed the offences on her.

The learned Counsel for the appellants urges strongly that this identification in respect of the 1st, 3rd and 4th accused is insufficient and suspect and it could well be that since they were produced along with the 2nd accused before Chandrawathie she identified all as the offenders. There appears to be much substance in this complaint as the circumstances under which this identification took place left no room for Chandrawathie to choose between a right identification and a wrong identification. The four persons alleged to have committed the offences were produced before her and she had only to say "yes" to complete the identification. In these circumstances and especially as the evidence of identity rested on the sole uncorroborated testimony of the prosecutrix we do not think it safe in the circumstances of this particular case to allow the conviction to stand in respect of the 1st, 3rd and 4th accused appellants. We therefore quash the convictions of the 1st, 3rd and 4th accused appellants and acquit them and affirm the conviction and sentence of the 2nd accused appellant and dismiss his appeal.

WIJESUNDERA, J.—I agree.

RATWATTE, J.—I agree.

*1st, 3rd and 4th accused-appellants acquitted.*

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