

## OFFENCES AGAINST PROPERTY

Chapter XVII of Penal Code

### **Theft**

According to Sec.366 of the Penal Code theft is defined as;  
Whoever;

- Intending to take dishonestly any,
- Movable property,
- Out of the possession of any person,
- Without that person's consent,
- Moves the property in order to such taking

Is said to commit “theft.”

In the case *Ekanayake v Silva*,

Where a wreath was removed from a graveyard. The court held that the object was not removed from the possession of another and therefore it does not amount to theft.

### **Theft is an offence against possession and not against ownership.**

1: If a person who has pawned something and not having money to recover it, takes it out of the possession of the pawn holder. This act amounts to Theft.

2: A person who gives something to another for safe keeping and if that other person takes it, it does not amount to a theft, since it is not taken out of the possession of anyone. (This does not apply to a servant, because a thing entrusted to a servant is regarded as being in the possession of the master).

3: A woman who gives a property belonging to her husband to her paramour has not committed theft. But the person receiving it is guilty of theft.

A house cannot be the subject of theft, but there may be theft of its materials. The human body, whether living or dead (except mummified or dead bodies preserved in scientific institution or medical college) is not subject of theft.

Animals can become the subject of theft, for they can be classified as movables. Illustration. The removal of animals grazing in open lands where it had been left by the owner is theft. But leading the animals to the pound is not theft. However, if a person, the owner or a stranger, removes cattle from pound where they are secured, without paying the levied fees, he is guilty of theft as he deprives the pound-keeper of his legitimate fees.

In Nagaiyah v Jayasekera

It was held that stealing electricity does not amount to theft within the meaning of section 20 of the PC because it is not a movable property. However this can be an offence under other Laws.

A thing is not a movable property as long as it's attached to the earth.

In King v Leon, The accused took a bull belonging to the complainant with intention of returning later. Temporarily borrowing of property with the intention to take dishonestly was considered as theft.

In Abdul v Dias

A licensed cattle seizer untied a bull from the complainant's garden and took it to the police station saying that he found it trespassing the road. Held the seizer was guilty of theft since he dishonestly tried to cause wrongful loss to the owner of the bull.

In Gnanaprakasam v Bullner,

Accused was charged of stealing coal from a railway yard. The accused believed that they were thrown away. (Abandoned things cannot be subject to theft) His belief in good faith (Bona fide) was considered sufficient to relieve him from liability.

Sec 114 of EO- within a reasonable period of the date of theft if the stolen good are found in the possession of a person who does not give an explanation as to how he came into possession of those, the court acts under the presumption that he committed theft or accepted the goods knowing that they were stolen property.

## **SEXUAL OFFENCES**

### **Sexual Harassment**

Vishakha and others v State of Rajasthan

Unwelcome sexually determined behavior directly or by implication as physical contact and advances/a demand or request for sexual favours/ sexually coloured remarks/showing pornography/any other unwelcome physical verbal or non-verbal conduct of sexual nature. Penalties described under Sec.345 of Penal Code.

## Grave Sexual Abuse

Whoever for sexual gratification, does any act that amount to rape, by use of his gentiles, any part of the body/any instrument, on orifice or any part of the body of the other person under the circumstance of without the consent, with or without the consent when other person under 16 yrs., with the consent that obtained through force/threat/intimidation/fear of death or hurt, with the consent when person under intoxication or unsound mind.

To establish a charge under section 365 (B) of the Penal Code the prosecution must establish that the alleged act was done with the intention of having sexual gratification This aspect must be proved beyond reasonable doubt.

1. To establish a charge under section 365 (B) of the Penal Code the prosecution must establish that the alleged act was done with the intention of having sexual gratification.

Yoqa v AG

2. Evidence of a victim in a case of sexual assault cannot be corroborated by a subsequent statement made by her.

Sana v Republic Of SriLanka

## Rape

Definition of rape is contained in section 363of the Penal Code.

The section requires two things.

(1) Sexual intercourse by a man with a woman.

(2) The sexual intercourse must be under circumstances falling under any of the clauses of the section.

As Per, Savinda VS. Republic Of SriLanka

To establish a charge of rape, the prosecution must establish the following ingredients. The appellant committed sexual intercourse on the woman.

The said intercourse was performed without her consent. If there is reasonable doubt in one of the ingredients the charge should fail.

### **“Statutory Rape” Sec 363 (e)**

When the victim is below the age of 16 years CONSENT IS IMMATERIAL. This will not apply when the victim is the wife who is older than 12 years and who has not judicially separated. Therefore sexual intercourse with a girl over 12 years of age is still available for some ethnic groups in Sri Lanka. On the other hand the consent of a girl who is between the ages of 16 to 18 years creates vacuum in our law.

“Sexual Intercourse” - Penetration is sufficient.

Perera v AG

### **Evidence of resistance - Physical injuries to the body is not essential to prove the absence of consent. (22/1995)**

Therefore, it is not necessary that the evidence of women should necessarily be corroborated and the degree of corroboration is varied with the circumstances with the case.

**“Without the consent” is an ingredient of the offence. Prosecution must prove it “beyond reasonable doubt”.**

### **Consent**

There is a difference between consent and submission to sexual intercourse. Every consent involves submission but the converse does not follow and a mere act of submission does not involve consent.

Inoka Gallage vs Kamal Addaraarachchi & another

### **Corroboration**

Sri Lankan cases have consistently insisted as a matter of prudence, that in a case of rape a conviction can be sustained only if the evidence of the prosecutrix is corroborated in some material particular by independent testimony. The evidence in corroboration must be independent testimony.

Inoka Gallage vs. Kamal Addaraarachchi & another

The King v. Atukorale

### **Credibility of the woman**

Generally, a conviction for rape almost entirely depends on the credibility of the woman so far as the essential ingredients are concerned, the other evidence being merely corroborative.

BharwadaBhoqinbhaiHirjibhai v. State of Gujarat, (SC), 1983

### **“Incest”** Section 364 A

The offence of incest was introduced by No. 22 of 1995 Act.

There are prohibited degrees of relationships determined by moral and medical grounds. Having Sexual Intercourse with another standing towards the other with any of the enumerated degrees of relationship.

### **“Gang Rape”** Section 364 (2) (g) (amended by No. 22 of 1995)

Occurs when a group of people participate in the rape of a single victim.

Requirements:

One or more persons, in a group, each person in such ‘group’ committing or abetting, The Commission of rape ‘deemed’ to have committed ‘gang rape’

*Hokandara case (Sajeewa Alias Ukkuwa and others v AG)*

*PromodMahto and others v The State of Bihar*

### **“Custodial Rape”**

The Penal Code outlines three specific scenarios for custodial rape:

- (1) Acts committed by public officers or persons in positions of authority against women in official custody or against women who have been wrongly restrained;
- (2) Acts committed by a person on the management or staff of a home or other place of custody established by law against women inmates;
- (3) Acts committed by a person on the management or staff of a hospital against a woman in the hospital, a pregnant woman in the hospital, a woman under 18 years of age in the hospital, or a mentally or physically disabled person in the hospital.

*Ram Kumar v State of HP*

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Reference [Lecture Slides].