

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

In the matter of an Appeal under and in  
terms of Section 331 of the Code of  
Criminal Procedure Act No.15 of 1979 read  
with Article 138 of the Democratic Socialist  
Republic of Sri Lanka.

Democratic Socialist Republic of  
Sri Lanka

**Complainant**

Court of Appeal  
Case No. CA HCC 170/2024

High Court (Embilipitiya)  
Case No. 124/2019

Vs.

Karanayakage Ranjith Vijitha Kumara *alias*  
Godelle Wasantha

**Accused**

**AND NOW BETWEEN**

Karanayakage Ranjith Vijitha Kumara *alias*  
Godelle Wasantha

**Accused-Appellant**

Vs.

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

**Complainant-Respondent**

**Before:** B. Sasi Mahendran, J.  
Amal Ranaraja, J.

**Counsel:** Chamara Nanayakkarawasam for the Accused-Appellant.

Dilan Ratnayake, A.S.G, P.C. for the Respondent.

**Argued on:** 27.02.2025

**Decided on:** 24.03.2025

## **JUDGMENT**

### **AMAL RANARAJA, J.**

1. The accused-appellant (hereinafter referred to as the “appellant”) has been indicted in the *High Court of Embilipitiya* in High Court Case No. HCE 124/2019.
2. The charges in the indictment are as follows:

#### Charge 1

That during the period 01.02.2015 to 28.02.2015, at *Embilipitiya* in the *District of Ratnapura*, within the jurisdiction of this Court, the accused-appellant has committed the offence of kidnapping, of a minor who was less than sixteen (16) years of age at the time, from the lawful guardianship of her mother, an offense punishable under section 354 of the Penal Code.

## Charge 2

That in the course of the same transaction, the accused-appellant committed rape on the said victim, who is under sixteen (16) years of age, and have thereby committed an offense punishable under section 364(2)(e) of the Penal Code as amended by Act No.22 of 1995.

3. At the conclusion of the trial, the learned High Court Judge has found the appellant guilty of the charges in the indictment and sentenced the appellant as follows;

|  |  |
|--|--|
| Charge 1   | Term of 05 years' rigorous imprisonment and a fine of Rs. 10,000 with a term of 06 months simple imprisonment in default of the payment of the fine. |
| Charge 2   | 20 years' rigorous imprisonment and a fine of Rs. 15,000 with a term of 06 months rigorous imprisonment in default of the payment of the fine.       |
| <p>Compensation of Rs. 250,000 to be paid to PW1, with a term of 12 months' simple imprisonment in default of the payment of the same.</p> <p>The Learned High Court Judge has also ordered that 20% of the amount fined and 20% of the amount awarded as compensation to be deposited to the Victims and Witnesses Protection Fund.</p> |  |

4. The appellant being aggrieved by the conviction and the sentencing order has preferred the instant appeal to this Court

#### **Case of the prosecution**

5. The appellant has been known to the father of PW1. In those circumstances, the appellant has visited the residence of PW1 on several occasions. During such visits, the appellant has developed an acquaintance with PW1. Thereafter, as planned, the appellant has met PW1, when she was on her way for extra lessons, lured her to visit a motel, and have engaged in sexual intercourse with PW1 thereafter.

#### **Case of the appellant**

6. The appellant has denied any acquaintance with PW1 and also denied that he had sexual intercourse with PW1.
7. When the matter was taken up for argument, the Learned Counsel for the appellant urged the following grounds of appeal;
  - i. The prosecution has failed to prove the case beyond a reasonable doubt.
  - ii. The Learned High Court Judge has erred in law in regard to the burden of proof and the quantum of proof.
  - iii. The Learned High Court Judge has erred in law in applying the provisions in section 166 of the Code of

Criminal Procedure Act No.15 of 1979 to convict the appellant.

iv. In any event, the sentence is excessive.

8. The evaluation of evidence in a trial is a fundamental aspect of the judicial process. It is vital for ensuring that justice is served and that legal outcomes are based on factual and reliable information adduced through evidence. Further, the evaluation of evidence can significantly affect the outcome of a trial. A strong case supported by credible evidence may lead to a conviction while insufficient evidence can result in an acquittal. The evaluation of evidence in a trial is also a multi-faceted process that requires careful consideration of various factors including the type of evidence present and the standards by which it is evaluated.

9. When one search through the disputed judgment it is apparent that the evidence adduced through the examination of witnesses of the prosecution and those of the appellant have been summarised by the Learned High Court Judge. Thereafter, such evidence had been evaluated. When evaluating the evidence adduced through the examination of witnesses, the Learned High Court Judge has adopted the test of probability, consistency, etc. Additionally, he has drawn his attention to the contradictions marked together with the omissions drawn to the attention of Court, in the cross-examination of such witnesses. The Learned High Court Judge has detailed the reasons for the materialisation of those contradictions and omissions. As regard to the evidence of PW1, her upbringing, her age, it being her first visit to a police station and the confusion occurred as a consequence of psychological trauma suffered by her have been taken into consideration and given thought to when analysing the same.

10. PW6, *Dr. S. J. Palliyaguru* has examined PW1 at the office of the Judicial Medical Officer at the *District Hospital of Embelipitiya* on 02.05.2015, beginning 12.25 hrs and prepared a medico-legal report. Such report has been marked as B-2. The Learned High Court Judge has drawn his attention to the contents of such report and given due weightage to the same.
11. Consequent to the evaluation of evidence presented at the trial, the Learned High Court Judge has held that the prosecution has presented cogent evidence to establish beyond a reasonable doubt that the appellant has committed the offences referred to in the indictment. In doing so, the Learned High Court Judge has given thought to the ingredients of the offences and applied the evidence divulged accordingly. He has also concluded that the evidence adduced on behalf of the appellant has failed to create a doubt in the prosecution's case.
12. Though, conclusive evidence as regard to the date which the appellant took PW1 to a motel has not been forthcoming, the Learned High Court Judge, perusing the obtainable evidence has fixed the date on which such incident occurred as 09.03.2015. Though, the date fixed is not compatible with the time period set out in the charges in the indictment, the Learned High Court Judge has proceeded to explain as to why such an incompatibility was not material. Having considered the appellant's defence, concluded that the appellant has not been misled by such incompatibility in the time period referred to in the charges in the indictment.

13. Section 166 of the Code of Criminal Procedure Act No. 15 of 1979 is as follows;

*“Any error in stating either the offence or the particulars required to be stated in the charge and any omission to state the offence or these particulars shall not be regarded at any stage of the case as material, unless the accused was misled by such error or omission.”*

14. In the decided case of **D. R. M. Pandithakoralege (Excise Inspector) vs. V. K. Selvanayagam 56 NLR 143**, Swan, J, has stated,

*“There can be no doubt that the accused was in no way misled by the mistake as regards the date in the plaint. In the case of William Edward James <sup>1</sup> it was held that a mistaken date in an indictment, unless the date is of the essence of the offence or the accused is prejudiced, need not be formally amended. In the course of his judgment dismissed the appeal the Lord Chief Justice referred to the judgment of Atkin J in the case of Dossi <sup>2</sup> where it was held that from time immemorial a date specified in an indictment has never been considered a material matter unless time was of the essence of the offence.”*

15. The psychological and physical effects of rape are profound and far-reaching. Rape is not merely a violation of individual rights, it creates a ripple effect that impacts families, communities and society at large. Therefore, it is imperative to implement a robust legal response to

ensure that legal frameworks recognise the seriousness of the offence and hold the perpetrators accountable.

16. In determining the appropriate punishment, the Court is required to consider the same from the point of view of the convict as well as the public.

17. In ***Attorney General vs. H. N. de Silva*** 57 NLR 121, Basnayake, ACJ, explaining the matters that should be taken into consideration in determining a sentence has stated as follows;

*“In assessing the punishment that should be passed on an offender, a Judge should consider the matter of sentence both from the point of view of the public and the offender, Judges are too often prone to look at the question only from the angle of the offender. A Judge should, in determining the proper sentence, first consider the gravity of the offence as it appears from the nature of the act itself and should have regard to the punishment provided in the Penal Code or other statute under which the offender is charged. He should also regard the effect of the punishment as a deterrent and consider to what extent it will be effective. If the offender held a position of trust or belonged to a service which enjoys the public confidence that must be taken into account in assessing the punishment. The incident of crimes*

*of the nature of which the offender has been found to be guilty and the difficulty of detection are also matters which should receive due consideration. The reformation of the criminal, though no doubt an important consideration is*



*subordinate to the others I have mentioned. Where the public interest or the welfare of the State (which are synonymous) outweighs the previous good character, antecedents and age of the offender, public interest must prevail.”*

18. The legal implications of a rape conviction extend far beyond the Court room. Convictions for rape carry significant implications not just for the victim but for the society as a whole ensuring that individuals convicted of serious offences are dealt with appropriately is crucial for justice and further deterrence of future offences. The legal consequences imposed on individuals convicted of rape are designed to reflect the seriousness of the crime.

19. S. N. Silva, J, as he was then, in assessing the aggravating circumstances as regards to the offence of rape has stated as follows in ***Attorney General vs. Ranasinghe [1993] 2 SLR 81***,

*“It is also appropriate to cite an observation made by the Lord Chief Justice in the Court of Appeal of England, with regard to the sentence to be imposed for an offence of rape. In the case of Roberts <sup>(4)</sup> at page 244. It was observed as follows;*

*“Rape is always a serious crime. Other than in wholly exceptional circumstances, it calls for an immediate custodial sentence. This was certainly so in the present case. A custodial sentence is necessary for a variety of*

*reasons. First of all to mark the gravity of the offence. Secondly to emphasise public disapproval. Thirdly to*

*serve as a warning to others. Fourthly to punish the offender, and last but by no means least, to protect women. The length of the sentence will depend on all the circumstances. That is a trite observation, but these, in cases of rape vary widely from case to case.”*

*In the case of, Keith Billam <sup>(5)</sup> the Lord Chief Justice repeated the foregoing observations and stated that in a contested case of rape a figure of five years imprisonment should be taken as the starting point of the sentence, subject to any aggravating or mitigating features. He observed further as follows:-*

*“The crime should in any event be treated as aggravated by any of the following factors : (1) violence is used over and above the force necessary to commit the rape; (2) a weapon is used to frighten or wound the victim; (3) the rape is repeated ; (4) the rape has been carefully planned ; (5) the defendant has previous convictions for rape or other serious offences of a violent or sexual kind ; (6) the victim is subjected to further sexual indignities or perversions ; (7) the victim is either very old or very young ; (8) the effect upon the victim, whether physical or mental, is of special seriousness. Where any one or more of these aggravating features are present, the sentence should be substantially higher than the figure suggested as the starting point.”*

20. It is seen that several of these aggravating circumstances are present in the instant case. The fact that PW1 was very young below the age where she may have consented to sexual intercourse, the degree of pre-planning by the appellant and the repeated commission of the offence, are some of those aggravating circumstances. Public interest demands that a custodial sentence be imposed on the appellant in this case.

21. Accordingly, under those circumstances, I am not inclined to interfere with the disputed judgment and the sentencing order. I dismiss the appeal.

22. The Registrar of this Court is directed to communicate this judgment to the *High Court of Embilipitiya* for compliance.

**Judge of the Court of Appeal**

**B. SASI MAHENDRAN, J.**

I agree.

**Judge of the Court of Appeal**